REPORT

ON

THE SYSTEM OF TRIAL BY JURY IN COURTS OF SESSION IN THE MOFASSAL

DURING THE YEAR

1890-97.

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PAPERS OF 1890—1897

RELATING TO THE SYSTEM OF

TRIAL BY JURY IN COURTS OF SESSION IN THE MUFASSAL.

From C. J. Lyall, Esq., C.I.E., Offg. Secretary to the Government of India, to the Chief Secretary to the Government of Madras, the Secretary to the Government of Bombay, Judicial Department, the Secretary to the Government of the North-Western Provinces and Oudh, Judicial Department,—Nos. 740, 741, and 743, dated the 31st May 1890. No. 1.

In the correspondence which has recently been under the consideration of the Government of India regarding the working of the Police and the machinery for the repression of crime, it has been alleged by several of the authorities consulted, that the jury system has in some degree favoured the escape of criminals, and in paragraph 5/5/6 of my letter of the * instant, I stated that [the Governor in Council / His Honour the Lieutenant-Governor (and Chief Commissioner)] would be separately addressed on this subject.

* Madras } 28th.
Bombay }
North-Western Provinces, 17th.

Trial by jury is not in force in the greater part of India, and where the system has been applied it is only certain offences that are tried by jury. In the large province of Bengal trial by jury prevails only in the Districts of the 24-Parganas, Hooghly, Howrah, Burdwan, Murshidabad, Nadia, Dacca, and Patna ; in Bombay, only in the Districts of Poona, Ahmedabad, Belgaum, Thana, and Surat, and the City of Karachi ; in the North-Western Provinces and Oudh, only in the Districts of Allahabad, Benares, and Lucknow ; in Assam, only in the Districts of the Assam Valley. The system is in force throughout the Madras Presidency with the exception of certain Agency or non-regulation tracts ; but the class of offences triable by jury has always been strictly confined to certain offences against property† of which theft is an element. In the North-Western Provinces and Oudh also the scope of the system is limited much in the same manner, but it extends in addition to the following offences, *viz.*, kidnapping and abduction, rape, criminal misappropriation, mischief, and offences relating to marriage. In Bengal all offences comprised in Chapters VIII, XI, XVI, XVII and XVIII of the Indian Penal Code come before juries. In Bombay the classes of offences so triable vary in different districts ; but wherever the system has been introduced at all, murder is one of the offences of which juries take cognizance. This is the more remarkable, seeing that cases of homicide have been carefully excluded in Madras and the North-Western Provinces, and that one of the objections most strongly urged against juries is the reluctance of a native juryman to convict when there is any possibility of a capital sentence being passed.

† Theft,—Sections 397, 380, 382, Indian Penal Code.
Robbery and Dacoity,—Sections 392—395, 397—399, 400—402.
Receiving Stolen Property,—Sections 411, 412, 414.
House trespass in order to commit theft,—Sections 451—459.
Breaking open a closed receptacle,—Section 461.

2. It is now some years since any detailed examination of the working of the jury system has come before the Government of India, though the Governor-General in Council observes from the Proceedings Volumes of the Local Governments that they have not failed from time to time to review its operation. I am therefore desired to ask [that [His Excellency in Council / His Honour] may be moved] to consider and report how the system has worked in the [Madras Presidency / Bombay Presidency / North-Western Provinces and Oudh], what opinion is entertained as to its merits as a means for the repression of crime, and what improvements, if any, are called for in its application.

No. 2. From C. J. LYALL, Esq., C.I.E., Officiating Secretary to the Government of India, to the Chief Secretary to the Government of Bengal,—No. 742, dated the 31st May 1890.

In the correspondence which has recently been under the consideration of the Government of India regarding the working of the Police, and the machinery for the repression of crime, it has been alleged by several of the authorities consulted that the jury system has in some degree favoured the escape of criminals, and in paragraph 7 of my letter of the 28th instant, stated that His Honour the Lieutenant-Governor would be separately addressed on this subject.

Trial by jury is not in force in the greater part of India, and where the system has been applied it is only certain offences that are tried by jury. In the large province of Bengal trial by jury prevails only in the Districts of the 24-Parganas, Hooghly, Howrah, Burdwan, Murshidabad, Nadia, Dacca, and Patna; in Bombay, only in the Districts of Poona, Ahmedabad, Belgaum, Thana, and Surat, and the City of Karachi; in the North-Western Provinces and Oudh, only in the Districts of Allahabad, Benares, and Lucknow; in Assam, only in the Districts of the Assam Valley. The system is in force throughout Madras Presidency, with the exception of certain Agency or non-regulation tracts; but the class of offences triable by jury has always been strictly confined to certain offences against property* of which theft is an element. In the North-Western Provinces and Oudh also the scope of the system is limited much in the same manner, but it extends in addition to the following offences, *viz.*, kidnapping and abduction, rape, criminal misappropriation, mischief, and offences relating to marriage. In Bengal all offences comprised in Chapters VIII, XI, XVI, XVII, and XVIII of the Indian Penal Code come before juries. In Bombay the classes of offences so triable vary in different districts; but wherever the system has been introduced at all, murder is one of the offences of which juries take cognizance. This is the more remarkable, seeing that cases of homicide have been carefully excluded in Madras and the North-Western Provinces, and that one of the objections most strongly urged against juries is the reluctance of a native juryman to convict, when there is any possibility of a capital sentence being passed.

* Theft,—Sections 379, 380, 382, Indian Penal Code.
Robbery and Dacoity,—Sections 392—395, 397—399, 400—402.
Receiving Stolen Property,—Sections 411, 412, 414.
House trespass in order to commit theft,—Sections 451—459.
Breaking open a closed receptacle,—Section 461.

2. It is now some year since any detailed examination of the working of the jury system has come before the Government of India, though the Governor-General in Council observes from the Proceedings Volumes of the Local Governments that they have not failed from time to time to review its operation. I am therefore desired to ask that His Honour may be moved to consider and report how the system has worked in the Lower Provinces, what opinion is entertained as to its merits as a means for the repression of crime, and what improvements, if any, are called for in its application.

3. I am to say, with reference to paragraph 3 of Home Department letter to the High Court, No. 400, dated the 27th March 1885, that the Honourable the Chief Justice and Judges have been addressed on the subject.

No. 3.

No. 744.

Copy forwarded to the Chief Commissioner of Assam with a request that the Government of India may be furnished with a report on the subject, so far as it relates to the working of the jury system in the Assam Valley.

No. 4. From C. J. LYALL, Esq., C.I.E., Offg. Secretary to the Government of India, to the Registrar of the High Court of Judicature at Fort William in Bengal, Appellate Side,—No. 745, dated the 31st May 1890.

In a correspondence which has recently been under the consideration of the Government of India regarding the working of the Police, and the machinery for the repression of crime, it has been alleged by several of the authorities consulted that the jury system has in some degree favoured the escape of criminals, and I am directed to address the High Court on this subject.

Trial by jury is not in force in the greater part of India, and where the system has been applied, it is only certain offences that are tried by jury. In the large province of Bengal trial by jury prevails only in the Districts of the 24-Parganas, Hooghly, Howrah, Burdwan, Murshidabad, Nadia, Dacca, and Patna; in Bombay, only in the Districts of Poona, Ahmedabad, Belgaum, Thana, and Surat, and the City of Karachi; in the North-Western Provinces and Oudh, only in the Districts of Allahabad, Benares, and Lucknow; in Assam, only in the Districts of the Assam Valley. The system is in force throughout the Madras Presidency, with the exception of certain Agency or non-regulation tracts; but the class of offences

triable by jury has always been strictly confined to certain offences against property* of which theft is an element. In the North-Western Provinces and Oudh also the scope of the system is limited much in the same manner, but it extends in addition to the following offences, *viz.*, kidnapping and abduction, rape, criminal misappropriation, mischief, and offences relating to marriage. In Bengal all offences comprised in chapter VIII, XI, XVI, XVII and XVIII of the Indian Penal Code come before juries. In Bombay the classes of offences so triable vary in different districts; but wherever the system has been introduced at all, murder is one of the offences of which juries take cognizance. This is the more remarkable, seeing that cases of homicide have been carefully excluded in Madras and the North-Western Provinces, and that one of the objections most strongly urged against juries is the reluctance of a native juryman to convict when there is any possibility of a capital sentence being passed.

* Theft,—Sections 379, 380, 382, Indian Penal Code.
Robbery and Dacoity,—Sections 392—395, 397—399, 400—402.
Receiving Stolen Property,—Sections 411, 412, 414.
House trespass in order to commit theft,—Sections 451—459.
Breaking open a closed receptacle,—Section 461.

2. It is now some years since any detailed examination of the working of the jury system has come before the Government of India, though the Governor-General in Council observes from the Proceedings Volumes of the Local Governments that they have not failed from time to time to review its operation. I am therefore desired to ask that the Honourable the Chief Justice and Judges may be moved to consider, and favour the Government of India with an expression of their views on, the following points, namely (1) how the system has worked in the Lower Provinces and Assam; (2) what opinion is entertained as to its merits as a means for the repression of crime; and (3) what improvements, if any, are called for in its application.

3. I am to say, with reference to paragraph 3 of Home Department letter No. 400, dated the 27th March 1885, that the Government of Bengal and the Chief Commissioner of Assam have been addressed on the subject.

From the Honourable Mr. J. F. Price, Chief Secretary to the Government of Madras, to the Secretary to the Government of India, Home Department,—No. 2096 (Judicial), dated the 29th December 1890. No. 5.

With reference to Mr. Lyall's letter of the 31st May last, No. 740, requesting the views of this Government upon the system of trial by jury, I am directed to forward copies of the letters received from the various officers consulted on the subject.

2. I am further to state that His Excellency the Governor in Council is of opinion that the jury system is unsuited to the country, and that it has had no effect one way or another upon crime. Short of abolishing the system, the only improvement that can be suggested is to rob it of its distinctive features by extending section 307 of the Code of Criminal Procedure, so as to render a reference to the High Court obligatory in every instance where the Judge takes a different view of the case to that adopted by the jury.

Extract from the Proceedings of the Government of Madras, in the Judicial Department,— No. 2095 (Judicial), dated the 29th December 1890. No 6.

Read again the following paper :—

G. O., dated 9th July 1890, No. 1131, Judicial. Abstract.—Requesting the Honourable the Judges of the High Court and other officers to favour Government with a report called for by the Government of India on the working of the jury system in the Madras Presidency.

Read also the following papers :—

From H. R. Farmer, Esq., Sessions Judge, Vizagapatam, to the Chief Secretary to the Government of Madras,—No. 575, dated the 12th August 1890. No. 7.

I have the honour to submit my views, as called for by Government in G. O., dated 9th July 1890, No. 1131, Judicial, on the working of the jury system, its merits as a means for the repression and crime, and what improvements, if any, are called for in its application.

2. The general result of my limited observation and experience is that I am of opinion that the jury system has not contributed to the success of our administration of criminal justice in this country, and that under present conditions no suggested improvements in its application are likely to make it successful.

3. My experience in this connection has, however, been exceptionally limited. There has been no jury case in this court since I took charge of it at the beginning of last November, and I have only tried a few jury cases elsewhere.

4. I have never had to disagree with a jury, and this means that the trials would have resulted in the same wy if there had been no jury.

5. Experience of assessors who are on the same list, shows how far the class possess the qualifications of intelligence and honesty without which the system can hardly be successful. In this connection it has to be remembered that, when special intelligence is required, a Judge cannot, in the case of a jury, as he can in the case of assessors, make a selection with reference to the requirements of the case, and in cases where there are temptations to give a verdict against the weight of evidence, it may and does, I fear, happen sometimes that those most likely to be wrongly influenced happen to be chosen as jurors. In this country caste opinion takes to a great extent the place of public opinion, and if an influential man of the caste or position in life of the foreman or leading members of the jury were accused of having fraudulently outwitted a man of some other caste, there would, I believe, be very little chance of the jury finding a verdict against him. On the other hand, when a similar jury has to deal with a case of theft against a man of low caste charged as an old offender, or against a man of a class generally regarded as criminal, very weak evidence is sufficient to procure a conviction. When a case of this kind happens to be complicated and to require the intelligent appreciation of direct and circumstantial evidence, it may often happen that the jury lacks not only the will, but also the ability, to do justice to the case.

6. Generally speaking, I think that in ordinary and simple cases where the judge requires no help, the verdict of the jury may be depended on; and that in the class of cases where the experience of the Judge would enable him, after the exercise of thought and discrimination to come to a just decision, he is not unfrequently prevented from giving effect to his judgment, as it is superseded by the verdict of an incompetent or dishonest jury. I do not, therefore, consider that the jury system, as a means of repression of crime, is successful.

7. In the matter of improvements, something may, no doubt, be done by District Magistrates in eliminating from the jury lists some of those whose reputation for honesty or intelligence is questionable; and in some instances a Sessions Judge may have information which may be utilized in this respect when revising the jury lists. Much cannot, however, be expected from efforts in this direction. I am more disposed to advocate giving the High Court power to direct a new trial in cases where the verdict happens to be manifestly wrong. On the other hand, in cases where juries have shown exceptional intelligence or independence in their verdict, I think local officers might be instructed to bring the names of the jury to the favourable notice of Government. No other suggestions for the improvement of the system occur to me. The negative praise which many officers consider the system entitled to merely shows, in my opinion, that the jury arrive at a right verdict when they could not well go wrong. When their services are really required to prevent a wrong decision by a Judge, I fear the system as a means of repression of crime can hardly be pronounced a success, and under present conditions in India, it appears to me that no suggestions for improvement can fairly be expected to make the system an efficient factor in the administration of criminal justice.

No. 8. From—R. S. BENSON, Esq., Sessions Judge of South Arcot, to the Chief Secretary to the Government of Madras,—No. 74, dated the 12th August 1890.

I have the honour to submit the following remarks on the working of the jury system, as desired by G. O. No. 1131 (Judicial), dated 9th ultimo.

2. I make no attempt to deal with the figures for the whole Presidency. That is rather for the High Court to do. I confine myself to my own actual experience in this district in 1888-89 and in the present year, and to the views which I entertain as a result of that experience and my general knowledge of the working of the system elsewhere.

3. The subject has during those years received my special attention owing to the distrust with which the High Court, as at present constituted, views the results of the system.

Trials by jury in 1888.

4. In 1888 out of 23 cases tried by jury, I differed from them in my opinion so positively as to consider a reference to the High Court necessary to prevent a failure of justice in only one case, *viz.*, a case of criminal trespass by night (Session Case 20 of 1888). I then reported: "Their verdict of 'not guilty' appears to me to be simply perverse and without any sort of justification in the evidence or probabilities of the case." The High Court convicted the prisoner. I believe that in that case the jury were set against the prosecution by some prevaricating answers of a police constable called to prove a previous conviction against the prisoner. His evidence, however, had nothing whatever to do with the substantive offence charged against the prisoner, and should not have influenced them in regard to it. In two other cases the opinion I had formed was different from that at which the jury arrived, but I recognized that there was room for a difference of opinion as to the value of the evidence, and I did not think

it necessary to express disagreement with the verdict. In one other, or, perhaps, in two others, I would have given a different decision as to one out of several prisoners tried.

Trials by jury in 1889.

5. In none of the 22 cases tried by jury in 1889 did I think it necessary to express disagreement with their verdict. This, however, is not to be taken as implying that their verdict was the same as that at which I would have arrived had I tried the cases alone. It merely means that I did not consider the verdict perverse, or such as might not be considered consonant with a reasonable view of the credit to be attached to the evidence. In one dacoity case the jury acquitted eight persons. I believed the evidence and would have convicted all the prisoners. In another dacoity case I would have convicted two out of five persons acquitted by the jury. In another case the jury acquitted one out of six persons; I would have acquitted two. In another I would have acquitted one out of five persons, but the jury convicted all.

Trials by jury in 1890.

6. In the first eight months of the current year, 14 cases have been tried by juries. In none of them did I think it necessary to refer the cases to the High Court. In one of them, however, the jury found the five prisoners guilty of dacoity. I would have acquitted one of them and possibly three. In two other cases the jury acquitted nine and six persons, respectively, of dacoity. I would have convicted five in the former, and all six in the latter of the two cases, but I cannot say that the view taken by the juries might not have been honestly taken by reasonable men. In the last of the three cases I disagreed very decidedly, but the verdict being one of acquittal I thought it unlikely that the High Court would interfere.

Trials with assessors in 1888—90.

7. I find that in the same period of two years and eight months I tried 63 cases with the aid of assessors, and that I differed from both assessors in 14 cases. In four cases I differed from one assessor and agreed with the other. The net result of the assessors' opinion in such cases is *nil*, and, if they be omitted from consideration, as they ought to be, I find that I differed from both assessors in 14 cases out of 63, that is in 22 per cent. The number of cases in which I arrived at a conclusion different from the jury as regards all or some of the prisoners was as shown above, 11 out of 59, that is, in 18 per cent. In several of the jury cases the disagreement was only partial, and therefore considerably less than if the figures represented complete disagreement. Throughout the Presidency, the percentage of cases in which the Judges differ from the juries is far less than that of cases in which they differ from assessors. There are many causes for this. Many of the cases dealt with by juries, such as thefts and house-breakings by old offenders, are very simple in their character and are often undefended, while the cases tried with assessors are more complex in character and are generally defended, owing to the accused being in a higher position in life. Such are grave offences against the person, forgery, criminal misappropriation and the like. It must also be borne in mind that the obligation of the Judge to express disagreement is altogether different in the two cases. In a trial with assessors the Judge is solely responsible for the verdict, no matter what the opinion of the assessors as to the facts may be. In a trial by jury, it is the jury who are responsible for the finding on the facts, and nothing short of perversity or very clearly demonstrable error would be held by most Judges to justify any expression of disagreement. The Government, in its order reviewing the administration of Criminal Justice in 1888, remarks that the jury are, no doubt, much strengthened by their power of joint consultation. This is so, but I think still greater influence is due to the fact that they have the Judge's charge to assist them in reviewing and weighing the evidence. If it were the practice to deliver as complete charges to assessors as to jurors, I do not doubt that there would be less disagreement than there is between their opinion and the verdicts of the Judges.

8. The High Court in their last Administration Report (G. O., dated 14th December 1889, No. 2133, Judicial) remark that "the principal danger to be guarded against is the wrong conviction of low-caste persons on insufficient evidence when they are known as old offenders or as belonging to the criminal classes." In regard to this it may be noted that the great majority of all those who are tried by juries are low-caste persons, and very often are old offenders or members of the criminal classes. This is inevitable from the fact that trial by jury in this Presidency is restricted to certain offences against property, in almost all of which theft is an element. So far as my experience goes, I do not think juries are specially prone to convict. I think they acquit wrongly as often as they convict wrongly, and the figures I have given for this district seem to support this view. I do not think, in either case, that the result is due to wilful perversity or corruption, nor is it due to fear of the criminals. I think it is usually due to want of intellectual power in dealing with and sifting the evidence, especially in complicated cases or where a large number of prisoners are concerned. It requires a strong

memory and a trained intellect and judgment to keep distinct in the mind, the whole of the evidence as it affects each of, say, eight or ten prisoners who are being jointly tried. Much can be done by an able and careful Judge to guide them by his summing up, but, notwithstanding all care on his part, I think that the chief risk is lest the jury should lump all the accused persons who are tried together as either all guilty or all not guilty. They become wearied and confused by the length and complexity of the facts and by the ingenious and often fallacious arguments of the vakils for and against the prisoners. They are then apt to seize on some single prominent fact and to allow their opinion in regard to it to govern their decision as to the whole case, even though it may be, in reality, quite inconclusive for that purpose.

9. From the remarks above made, it may be thought that I condemn the system as a whole, but such is not my meaning. I merely draw attention to what seem its weak points. It is, of course, "a foreign exotic," but so are many of the best institutions in India. I do not think that it is much valued by the people. It certainly is not rooted in their affections, like its English exemplar, by a life of over seven centuries since England's greatest lawgiver promulgated the Assizes of Clarendon. Even in England the system is now pretty well *functus officio*. It is no longer required to stand between the people and a judiciary too subservient to the Crown, for the Judges can no longer be removed by the Crown *quamdiu se bene gesserint*. I think that in India the system is of doubtful utility as a means of ascertaining truth, but I think its collateral advantages, in associating the higher classes of the people with the administration of justice, are considerable, and might become much greater if at any time the Government became less popular with, and less trusted by, the masses. Perhaps, too, juries are more often right than Judges, in their self-sufficiency, give them credit for. Different men—even different Judges—will often take different views of the same set of facts. It is a mere truism for me, or for any Judge, to say that, when I differ in opinion from a jury, I think the jury are wrong; but it may, perhaps, be that others would think the jury right and the Judge wrong. It is very necessary to bear this in mind in drawing any conclusions from the number of cases in which the Judges differ from the juries.

10. I think one of the great advantages of trial by jury is its finality, and I would not diminish that by legislating in the sense suggested by the High Court so as to give the High Court power, on appeal, to order a fresh trial by another jury. The Sessions Judge may now, if he thinks it necessary for the ends of justice, refuse to act on the verdict of the jury and may submit the case for the orders of the High Court, which may then convict or acquit the accused or make any order which it might make on appeal. If the Judge does not refer the case, it is because he is satisfied that the view of the jury as to the facts is one which may honestly and reasonably be taken. If this is the opinion of the Sessions Judge and of the five jurymen who have heard every word of the evidence as uttered by the witnesses, and have had the advantage of watching their demeanour while under examination, I respectfully doubt whether it would be well that it should be liable to be set aside, on appeal, by Judges who would be without those special advantages, and who might have far less knowledge of the people and of native witnesses. The inconvenience of holding a fresh trial several months after the first trial, and the probability of its proving unsatisfactory after so long a delay, would be great. If the second jury agreed with the first, would the High Court order a third trial, or would they then allow to pass what they previously regarded as a failure of justice? I think the present method of allowing the High Court, when they interfere at all, to deal finally with the case, is better from every point of view.

11. On the whole I neither condemn nor extol the system. I think it "works fairly well," and that it is likely to work better as time goes on. I would at present neither abolish it nor extend its application, but I would continue to watch its operation with attention and to facilitate its improvement by systematic and careful revision of the jury lists.

No. 9. From J. A. Davies, Esq., Sessions Judge, Tanjore, to the Chief Secretary to the Government of Madras,—No. 400, dated the 13th August 1890.

In reply to G. O., dated 9th July last, No. 1131, Judicial Department, requesting my views regarding the working of the jury system in this Presidency, I have the honour to state that, so far as the Tanjore District is concerned, the system is working admirably well. During the five last years, 1885 to 1889, the number of cases tried by jury was 134, and in only three of these cases was reference made to the High Court by the presiding Judge in disapproval of the verdict given.

2. In the first case in 1886 the jury gave a too hasty verdict of guilty, for which the Judge (myself) was partly to blame, and on the re-trial ordered by the High Court, the same jury rightly acquitted the prisoners. In the second case in 1888 the jury gave a confused

verdict as to the respective guilt or innocence of several persons charged with dacoity, which was ultimately put right by all the prisoners being convicted. In the third case in 1889, the jury acquitted, which acquittal was upheld by the High Court.

3. So it will be seen that eventually not a single miscarriage of justice has occurred in the past quinquennium, and during the current year all the verdicts of the jury, both in regard to the persons they convicted as well as those they acquitted, have met with my entire approval.

4. Tanjore is, of course, an advanced district in the intelligence of its inhabitants. In places (if any) where reports regarding the system should prove unfavourable, I expect the true cause will be found to be the general backwardness of the population in civilization, or, if I may hint at such an alternative, the fault of the Judge in not taking sufficient pains to guide his juries into the right course.

5. In a district like this where the system has worked so satisfactorily, I would advocate its extension for the trial of every crime in our decalogue, excepting cases of culpable homicide for my experience confirms the truth of the fact that in such cases assessors show the greatest reluctance to convict when there is a possibility of a capital sentence being passed.

6. I can think of no other improvement to suggest, and as to the merits of the system as a means for the repression of crime, I submit that it works as much good as a good tribunal can work to that end.

From G. D. Irvine, Esq., Sessions Judge, Coimbatore, to the Chief Secretary to the Government of Madras,—No. 973, dated the 16th August 1890. No. 10.

As requested in G. O., dated 9th July 1890, No. 1131, Judicial, I have the honour to report on the working of the jury system in this Presidency, so far as I am able to judge from my own experience thereof.

2. Broadly speaking, I am of opinion that the system has worked fairly well, and, with proper safeguards, may continue to do so; but I deprecate any extension of it.

3. I have met with very few cases of that "perversity" on the part of juries which has been more than once animadverted upon by the Madras High Court. When juries err, I believe they do so partly from ignorance, and partly from inability to appreciate evidence, at least as educated Europeans appreciate it.

4. But it must be remembered that Natives look at many things from a totally different stand-point to ours, and it is not, therefore, wonderful that they should frequently differ from us in their conclusions. And the fault of ignorance is by no means peculiar to *Native* jurors.

5. Where a Judge is careful in his summing up and does not hesitate to use freely the discretion vested in him by the last clause of section 298 of the Criminal Procedure Code, I believe that juries seldom deliver a wrong verdict.

6. *The* great advantage of the jury system, to my mind, is that it limits the power of appeal, which is so liable to abuse in this country.

7. In this respect, as well as in others, it compares most favourably with that of assessors, who, when not useless, are generally mischievous.

8. I regard them as useless, for I can hardly remember a case in which the opinion of the assessors has in any way assisted me.

And I call them mischievous, because, however wrong a view they may take, the fact that the Judge has differed from them is very often made (and considered to be) a ground of appeal.

9. I deprecate the extension of the jury system to cases where pecuniary, personal, or religious influence would probably be brought to bear, or where caste sympathy is likely to be felt.

10. Offences against property, of which theft is an element, are generally committed by persons with whom jurors have no sympathy, and they are thus able to regard such cases dispassionately. Even here, however, instances have occurred where, in spite of all precautions, there has been good ground to suspect that the jury has been tampered with. And I fear that any extension of the system might render such instances more frequent. With assessors, the game is hardly worth the candle.

11. I especially deprecate the extension of the system to cases of homicide, not only because of the reluctance of the Native to convict in such cases—that is even now being overcome with the more educated section of assessors—but the great difficulty lies in the fact that it is hardly possible to convince a Native by circumstantial evidence. He *will* have an eye-witness; and in the graver cases of homicide, it is the alleged eye-witness that is most usually false.

12. To such cases the dictum attributed to a late Chief Justice applies with great force "If I am guilty, give me a jury; if innocent, give me a judge."

No. 11. From R. S. BENSON, Esq., Sessions Judge of South Arcot, to the Chief Secretary to the Government of Madras,—No. 88, dated the 16th September 1890.

In continuation of my letter No.74, dated the 12th ultimo, in regard to the working of the jury system in this Presidency, I have the honour to submit, for consideration, that it might be an improvement if the system of special, as well as common, juries, which obtains in the Presidency towns, were extended to the mofussil.

2. The number of cases in which improper influences are likely to be brought to bear on jurors is, at present, small, owing to the nature of the offences which are triable by a jury and the class from which the offenders come; but such cases do, at times, come up for trial. A dispute between members of a family as to the right to land, in the course of which one side carries off the produce by force, may amount to a technical dacoity and come before a jury for trial. Such cases usually occur where the family is wealthy and influential, and then improper influences are likely to be brought to bear on the jurors. Such a case occurred recently in this district, and, if report speaks true, attempts were made to "nobble" the jury, but I have no reason to think the attempts succeeded. The verdict was given in accordance with my summing up. Again dacoities are sometimes instigated by wealthy men to injure or disgrace their enemies, and in some few cases dacoities are committed by gangs under the regular protection of wealthy men. In all these cases efforts are likely to be made to influence jurors, and as such cases are defended and usually last over one day, there is no difficulty in making the attempt at night.

3. If it were open to the Session Court, on the application of the Public Prosecutor, who would act under instruction from the District Magistrate, to summon a special jury for the trial of any case in which an attempt to influence the jury might be anticipated, the risk of a failure of justice from this cause would be minimised. Such cases would rarely occur, and the special jury list need only be a small one. The jury list in this district contains 250 names. The special list need not contain more than 12 or 15 names. These would be men known to the District Magistrate and Session Judge as men of established reputation and unlikely to be open to improper influence. On it would probably be placed the names of the chief Europeans at present on the jury list such as the Local Fund Engineer and some of Messrs. Parry and Co.'s local agents. These Europeans are of no particular value in the trial of an ordinary jury case, but they might be of great value in the trial of a case where for any reason members of the jury had been tampered with and were inclined to give a verdict otherwise than in accordance with the evidence.

The chief objection to a special jury list seems to be that, where it exists, the common juries are weakened by the withdrawal from them of the best men who might be expected to strengthen them and guide their deliberations. This is certainly a consideration of importance, but it becomes less the smaller the special jury list is made. I would not have more than 12 or 15 names on the list for this district, and I do not think that the withdrawal of this number would materially weaken the common juries.

No. 12. From H. W. FOSTER, Esq., Officiating Registrar of the High Court of Judicature, Appellate Side, Madras, to the Chief Secretary to the Government of Madras,—No. 2543, dated the 5th November 1890.

With reference to G.O., dated 9th July 1890, No. 1131, Judicial, communicating letter, dated 31st May 1890, No. 740, from the Officiating Secretary to the Government of India, Home Department (Judicial), for favour of a report on the working of the jury system in this Presidency, I am directed to forward the accompanying transcript of the minutes of the Honourable the Chief Justice and the other Judges of this Court.

ENCLOSURE.

The Chief Justice.—I have come to the conclusion, after careful consideration, that trial by jury in the mofussil in this Presidency is not satisfactory. I have taken an interest in the subject, and during the greater part of the five years I have been Chief Justice, I have examined the evidence given in many cases and studied the summing up (if it can be so called) of the Sessions Judges. Undoubtedly in cases of dacoity the jury convict on the slightest and most unreliable evidence, and in cases where a considerable number of prisoners are tried together, the jury appear utterly unable to weigh and consider the evidence as it affects each prisoner. This is not to be wondered at; the summing up of the Judge has to be interpreted

to the jury—to five persons sitting more or less uncomfortably in the jury box; the interpreter in the majority of cases, no doubt, interprets the Judge's words fairly accurately, but it is very difficult to believe that the whole jury really appreciate the different points of the evidence; they listen to the definition of the offence, but, as far as I am capable of judging from the numerous cases brought before me, they do not distinguish between the different prisoners. I may here remark that Mr. Justice Muttusami Aiyar objected some years ago to cases of dacoity being tried by a jury, but he was overruled by the other Judges.

In the cases against old offenders, the jury usually convict.

It is perfectly true that very few cases are referred to the High Court under section 307, Criminal Procedure Code. Sessions Judges apparently think that disagreeing "so completely" from the jury means something very far from merely "disagreeing." A case came before me a short time ago in which the Sessions Judge stated: "I do not think it incumbent on me to send the case to the High Court though being personally doubtful whether the verdict was justified by the evidence. There will probably be an appeal." There was an appeal, but the High Court was powerless and had to dismiss the appeal, as the question was one of fact. There can be little doubt from the Sessions Judge's observation that, if these prisoners had been tried by the Sessions Judge and assessors, they would have been acquitted—see a report of this case—Indian Law Reports, 13, Madras, 343.

Under section 423, Criminal Procedure Code, the High Court can only interfere with the verdict of a jury, when it is of opinion that such verdict is erroneous owing to a misdirection of the Judge, or to a misunderstanding on the part of the jury of the law as laid down by the Judge. By section 367, Criminal Procedure Code, in trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury. I am informed that these "heads of charge" sent to the High Court by the Sessions Judges are written out by them in many instances on a day after the trial of the case, and indeed it would almost be impossible for a Judge to write out many of the "heads of charge" I have seen during the hurry of a trial. Without the High Court can detect a misdirection of the Judge in the heads of charge, they cannot interfere on that ground under section 423. Now I have been thirty years at the Bar, have tried, prosecuted, and defended scores of prisoners, and yet I declare that, after being engaged all one day in the trial of prisoners, I should be reluctant to have a day or two afterwards to write out an account of what I had said in any one case to the jury. I should know what I ought to have said on the points of law.

It is true, as I have said before, that Sessions Judges very seldom differ "so completely" from the jury as to necessitate a reference to the High Court; yet they have no hesitation in differing from assessors, and I suppose they differ completely, more especially in cases of forgery and murder—the assessors acquitting and the Judge convicting the prisoners. In very simple cases where there is one or at most two prisoners, I see no harm in having a jury, but the case would be tried in all probability much better by the Judge aided by assessors.

I do not think that there is any popular feeling in favour of trial by jury. The pleaders of the Courts who defend prisoners doubtless approve of the system, as they believe they have a better chance of getting an acquittal in many cases when their client is guilty, especially if he be rich and popular. I believe that in the mofussil the people care much more for the privilege of an appeal to the High Court than they do for the very doubtful advantage of being tried by a jury.

It is somewhat extraordinary that, whilst in England a large and influential section of the community, including many eminent lawyers, are agitating for a Criminal Court of Appeal, consisting of Judges who are to re-hear and decide on the facts as well as the law of the different cases brought on appeal before them in India, where the present system of trial by jury has only been recently introduced, the law should by express enactment prevent the convicted person appealing on a question of fact.

In conclusion, I would humbly express an opinion that, if the present system of trial by jury be retained, persons convicted should have the same powers of appealing as if they had been tried by a Judge and assessors.

Mr. Justice Muttusami Aiyar.—As regards the system of trial by jury, there is a considerable diversity of opinion among Sessions Judges, some pronouncing it, on the whole, a failure, some considering it to have worked fairly well, and others pronouncing it to be defective in certain classes of cases only. There are also extreme opinions expressed on the subject—one Judge stating that the jury would return a correct verdict, if properly charged, in 99 out of 100 cases, and another Judge describing the jurors as illiterate and ignorant

persons without due sense of the responsible duty devolving upon them. I am, however, of opinion that the system has worked tolerably well, though in some cases not quite as satisfactorily as was anticipated. I think that the number of cases in which the High Court has altered the verdict of the jury under section 307, Criminal Procedure Code, may be accepted as showing that the system has worked well, so far as it can be judged from the number of perverse verdicts or of verdicts resting upon no legal evidence or upon no reasonable evidence.

The cases, however, in which its operation is found defective, are those of dacoities in which evidence as to the identification is the only evidence available for conviction, and those in which the persons charged are old offenders. Dacoits are so much feared outside the Presidency town that when there is some positive evidence, the mofussil jurors are prone rather to convict than acquit, though the evidence may not be such as a Judge would deem it safe to act upon. It happens also that old offenders are judged at times by jurors rather with reference to their antecedent conduct, than with strict regard to the value of the evidence available against them in the particular case under trial. But these defects may be rendered innocuous by extending the operation of section 307 to all cases, in which the Judge considers that a right verdict has not been arrived at by the jury upon the evidence before them, and *not* limiting it as judicially interpreted by the different High Courts to cases of perverse verdicts, or of verdicts resting upon a mere scintilla of evidence.

It has also been found that in cases in which the number of prisoners jointly tried is large, the jury have not sufficiently weighed the evidence against each prisoner, and at times convicted some who ought to have been acquitted. In such cases failure of justice may be prevented by the Judge summing up the evidence against each prisoner with care, and by ordering separate trials when the prisoners exceed a certain number.

In conclusion, I may add that I am in favour of retaining the system of trial by jury. The people in general liken it to trial by punchayet, and a conviction is steadily spreading among the native community in favour of associating natives of intelligence and respectability with the administration of criminal justice. The system has been a success in Mysore and Ceylon, and has always been in force in the Presidency town. It would be a retrograde move to abolish the system whilst it only needs some safeguard during its infancy.

Mr. Justice Shephard.—I am disposed to think there is a good deal in what Mr. Davies says as to the need of a careful and patient summing up to the jury. It is not surprising that Sessions Judges from want of experience should fall short in this respect of what is required in order to make the system work well. If the summing up is more complete and satisfactory than generally appears to be the case, its good qualities do not appear in the note which is recorded, and here I think the system does not work well, because the High Court has no means of knowing what the Judge has really said. If we are to be in a position to know whether there has been a misdirection, we ought to have a short-hand note of the words used by the Judge and not a mere note of his recollections, which may be made hours or days after the summing up took place. I have referred to the want of experience of Judges, and I think it is probable that if a larger proportion of cases were tried by juries, the work would be better done. It is not to be expected that Judges without great practice will acquire the difficult art of putting a case to a jury. Unless the system is to be extended—which I certainly do not advocate—I doubt whether it will work satisfactorily.

Mr. Justice Handley.—My experience of many years as Government Pleader of the working of the jury system in this Presidency has led me to think that it has not been very successful, and that the institution is not adapted to the present state of things in the mofussil, and these views have been strengthened by what I have observed since I have been officiating as a Judge of the High Court. There are to my mind two objections at the outset to making trial by jury a part of the system of criminal justice in the mofussil. The first is that it does not fit in with the system of appeal, which is such an essential part of that system. A right of appeal when the Appellate Court can only interfere when there has been error of law or a finding of fact induced by a misdirection, or if there is no evidence to support the verdict, is a very curtailed right of appeal and there seems no reason in principle why persons convicted of a particular class of offences, and those persons liable to very heavy punishments should have their right of appeal so limited. And, as is pointed out by Mr. Justice Shephard, even this limited appellate power is exercised with great difficulty by the High Court, owing to the impossibility of having the exact words of the charge to the jury. With every intention on the part of the Sessions Judge to give in the "Heads of charge to the jury" a correct abstract of what he did say, it must sometimes happen that words which had a considerable effect in inducing the verdict do not appear in the "Heads of charge."

Looked at in the light of a curtailment of the right of appeal, I should have thought, but for Mr. Justice Muttusami Aiyar's opinion, that the institution of trial by jury would not be popular in India, and, with great deference to that opinion, I should like some further inquiry as to the wishes of the people at large before I am satisfied that it is popular. I am strongly of opinion that very few, if any, accused persons, if they had the option of trial by a Judge in the ordinary manner with a full appeal to the High Court or trial by jury without such an appeal, would prefer the latter.

As to the assertion that the institution has succeeded in Mysore and Ceylon, I may mention that I have lately been in correspondence with a Judge of the Supreme Court of Colombo, who writes to inquire if any steps are being taken in India for the abolition of trial by jury and says that after seventeen years' experience in the island as Crown Advocate and Judge, he is convinced that it is wholly unsuited to the country.

The second objection on the face of things to trial by jury in the mofussil is that, unless it can be extended to all offences—and it is admitted it cannot—it produces great confusion in the case of persons charged with different offences, some triable by jury and some not. The result of trying a person for dacoity by jury, and for dacoity with murder, arising out of the same occurrence, by a Judge and assessors, might be expected to be not altogether satisfactory, and when, as has happened occasionally, the jury acquits, and the Judge with assessors, possibly taken from the same jury, convicts, or *vice versa*, there is something like a *reductio ad absurdum* of the system.

The faults which I have observed in mofussil juries—and I believe them to be insurmountable in the present state of native society—are a tendency to convict old offenders and members of the criminal classes of such offences as dacoity and robbery upon the slightest evidence, and to acquit persons of wealth and influence of any offences in spite of the strongest evidence.

If the institution of trial by jury is to be retained, it is necessary in my opinion that much larger powers should be given to the High Court of dealing with the facts on appeal, and the power of the Judge to refer a case in which he differs from the jury should be exercisable in every case, and not limited as now to cases in which he differs so completely from the verdict as to consider it necessary for the ends of justice. And I strongly incline to the opinion that dacoity should be taken out of the list of offences triable by jury.

Mr. Justice Best.—I am sceptical as to the popularity of the system of trial by jury in this country. I am aware that its extension was advocated by persons posing as representatives of public opinion, but it not infrequently happens that such persons do not represent the opinion of the public. As a matter of fact, I know the system is unpopular with *jurymen*; and I have also known instances in which *accused persons* asked to be tried by the Court with the aid of assessors rather than by a jury.

Be the accused innocent or guilty, it stands to reason that he would rather be tried by a tribunal from which there is an appeal, than by one from whose findings of fact no appeal is allowed. The only way of testing the *efficiency* of trial by jury is to allow appeals in such cases both on questions of fact and on questions of law and watch the result. As to the *popularity* of the system, it might be tested by allowing the accused the option of being tried by jury or by the Court with assessors.

If the system is a success, I do not see why it should not be extended to the trial of *all* offences in Sessions Courts. If it is a failure, it should not be adopted in any case.

The only advantage it seems to possess is that it reduces the number of appeals, which may, however, be a denial of justice.

It is doubtful whether the ordinary juryman in the Mofussil Courts is capable of properly appreciating and discriminating evidence, in cases of dacoity or other offences in which several persons are tried jointly. Also it is difficult for the High Court to know positively whether there has, or has not been a mis direction on the part of the Judge, in the absence of a *verbatim* report of the charge.

Mr. Justice Weir.—I have already, in the beginning of the year, in my capacity of Sessions Judge of a Mofussil Court, expressed my opinion on the system of trial by jury. In my present capacity, I am content to express my entire concurrence in the views expressed by Mr. Justice Handley, and also in the alteration of the provisions of the code proposed by him.

From H. W. Foster, Esq., Officiating Registrar of the High Court of Judicature, Appellate Side, Madras, to the Chief Secretary to the Government of Madras,—No. 2565, dated the 7th November 1890. No. 13.

In continuation of my letter of the 5th instant, No. 2543, I have the honour to forward an extract from the Report on the Administration of Criminal Justice in Salem for 1889, containing the opinion of Mr. (now Justice) Weir on the working of the jury system.

EXTRACT.

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Working of Jury System.

39. (1) The present Acting Sessions Judge (Mr. Weir) has had so limited an experience of the Salem district, that he feels he would not be justified in expressing an opinion on the working of the jury system in this district.

(2) His experience elsewhere, however, has led him to distrust the efficiency of this mode of trial, save in cases of the simplest character.

(3) A large proportion of jurymen are not sufficiently intelligent to appreciate evidence, and a still larger proportion appear not to possess any adequate sense of the responsible character of the duty which they are sworn to perform.

(4) Where a large number of accused are involved (as in dacoity cases) the verdicts of juries are apt to be capricious and arbitrary, *i.e.*, not in accordance with the weight of the evidence.

(5) Jurymen, it has also been noticed, are occasionally under the influence of one of their number who happens to be a personage of importance. The Acting Sessions Judge tried one case in which four out of the five jurymen entirely surrendered their judgment, and practically the verdict, to an influential foreman (a Mittadar).

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ORDER—By the Government of Madras, dated 29th December 1890.

The Government of India will be addressed.

(True Extract.)

J. F. PRICE,

Chief Secretary to the Government of Madras.

No. 14. From W. LEE-WARNER, Esq., Secretary to the Government of Bombay, Judicial Department, to the Secretary to the Government of India, Home Department,—No. 7105, dated the 19th December 1890.

I am directed to acknowledge the receipt of your letter No. 741, dated the 31st May 1890, requesting that the working of the system of trial by jury in this Presidency may be considered, and the opinion of this Government reported as to its merits, and as to the improvements, if any, called for in its application.

2. In reply I am directed to state that the system of trial by jury prevails in the City of Bombay and in the districts of Poona, Ahmedabad, Belgaum, Thana and Surat, and the City of Karachi, into which places, except Bombay and Poona, it has been introduced since the year 1884. The number of jurors is nine in Bombay and five in each of the other districts. The offences triable by jury in the districts are:—

Poona	Offences under Chapters VIII, XI, XII, XVI, XVII, XVIII, or any of said chapters with section 75 of the Indian Penal Code, punishable with death, transportation for life, transportation or imprisonment for a period exceeding ten years, or abetments of or attempts to commit such offences.
Ahmedabad	All offences punishable with death.
Belgaum	All offences punishable with death, transportation for life, imprisonment for ten years.
Thana and Surat	All offences punishable with death, transportation for life, or imprisonment for ten years.
City of Karachi	All offences punishable with death, transportation for life, or imprisonment for ten years.

3. The questions that arise out of your letter under reply appear, I am to say, to be first the general question of the relative advantages and disadvantages of the system of trial by jury as it exists in this Presidency, and secondly, the special question whether juries show an undue tenderness or timidity in dealing with cases of murder. The High Court and certain selected officers to whom these questions were referred for report, and copies of whose replies are appended, were also asked to make any suggestions for the modification of the present system, which divides cases triable by a jury from those not so triable according to degrees of punishment.

4. From the replies received, the Governor in Council finds, I am to state, that there is on the first point referred, a general consensus of opinion that the system is not, if looked at from a purely judicial point of view, more successful than the system of trial by a Judge and assessors. The Honourable the Chief Justice of the High Court regrets that it was not introduced with more caution; and other Judges of the High Court and the mofussil

regard it as having, at the least, no special judicial merits. Though none of the officers consulted advocate the total abolition of trial by jury, they merely hesitate to do so chiefly because of its popularity with a portion of the native public and the consequent collateral political advantages which attend it. Only two Judges advocate the extension of the system to places other than those in which it at present exists, but even so with certain limitations.

5. With regard to the question of the effect of the system in connection with trials for offences against human life, there is a practical unanimity of opinion that trial by jury does not work satisfactorily, and that in any extension of the system to other parts of the Presidency such offences should be excluded from the category of those triable by juries. There is, further, a tolerably general agreement that such offences should cease to be triable by juries in at least three of the cities where it now exists. The Honourable Mr. Justice Telang is led to the conclusion that murder cases should cease to be put before a jury in Ahmedabad, Surat and Belgaum. The Honourable Mr. Justice Farran considers that the notorious antipathy of a large population in Surat and Ahmedabad to capital punishment foredoomed the system of trial by jury to failure in those centres.

6. On the question of the classification of offences triable by jury there is much divergency of opinion. Some of the Judges advocate a classification based on the nature of the offence, and add recommendations of the cases that should be excluded; others would include all cases, except murder, triable exclusively by a Court of Sessions. None, it may be observed, expressly approve of the present classification according to the degree of punishment.

7. I am now to state the conclusions at which the Governor in Council has arrived on the evidence before him. I am to observe that the subject had, before the receipt of your letter, been engaging the attention of the Governor in Council in connection with the steady increase of murders in this Presidency. An examination of the results of trials for murder in jury and non-jury districts showed that there was but little difference in the percentage of convictions in the two sets of districts: 57·8 per cent. in the jury districts and 55·7 per cent. in the others in the period 1881—84 before the introduction of trial by jury. In the next four years, 1885—88, there was a decided falling off in all districts in the proportion of convictions: but, whereas in the non-jury districts the fall was only from 55·7 to 48·0 or 17·4 per cent., in the jury districts it was from 57·8 to 38·8 or 32·8 per cent. A similar examination in four jury districts, as compared with four non-jury districts, of jury cases other than murder tried in 1885—88 showed that a somewhat smaller percentage of persons were convicted in the non-jury districts: 55·0 per cent., in the jury districts and 51·6 per cent. in the others; but this, it is observed, is exclusively due to the fact that a larger proportion of convictions, *viz.*, 58·4 per cent., was obtained in the class of serious offences against property in the jury districts as against 41·0 per cent, in the non-jury districts. In the other classes of cases, *viz.*:—

(i) against the State, public tranquillity, safety and justice,

(ii) serious offences against the person (excluding murders),

(iii) offences against marriage,

the percentages of convictions in the non-jury districts were, respectively, 68·0, 65·6 and 45·4 as compared with 36·7, 58·7 and 25·0 in the jury districts. The results of these examinations would seem to show that, except in cases of serious offences against property, in which, according to some of the Judges, juries are unduly eager to convict, trial by a jury results in many more probably improper escapes of guilty persons from justice, than trial without a jury. I am, however, to point out that some deduction from the number of convictions in the latter case has probably to be made to allow for reversals of the Sessions Judges' judgments by the High Court on appeal. Taking this into account, the differences, though considerable, do not appear to the Governor in Council to render the case against the retention of juries so strong as at first sight it would appear to be. It may be admitted that for preserving the peace and well-being of the empire, the jury system is not needed by Government. It is in some measure out of harmony with our system of government, which does not certainly recognize any necessity for the Government being kept in check by the assumed higher public morality of juries. In the very cases in which this last principle would operate most strongly, that is, in cases of a political aspect, it is almost universally admitted that the use of juries might be attended with public danger. The Governor in Council is, however, of opinion that the political aspect of the question ought not to be lost sight of in discussing it. In this country the jury system is looked on with considerable pride by the pretty large class whose idea of progress consists in the imitation of English

institutions. The more interested they thus become in the jury system, the better on the whole will it work in their hands or with their aid. They would certainly resent its extinction, and their reclamations would find echoes elsewhere. Again, the use of juries, when fairly good juries can be had, possesses some undoubted advantages. It prevents the main principles of justice and legal reasoning from being hidden away in technicalities. Everything laid before a jury has to receive a popular exposition and be submitted to common-sense test. The jurymen themselves receive and carry away a true idea of legal principles. They learn that the Judges are acute, wise, and impartial, and see how really difficult a task adjudication is. They diffuse these experiences and the consequent regard for law and the judicial administration throughout society. Culprits, again, who are condemned on the verdict of a jury can never say that they have been sacrificed to official animosity or prejudice. The jury form a group always ready to contradict any such assertion. It appears to the Governor in Council that it is a distinct benefit to have the odium of apparently harsh decisions thus taken off the shoulders of the official class.

8. The Governor in Council believes, from the reports before him, that the system may be considered moderately successful at Bombay, Karachi, Poona, and Thána. These are all places where the jurors are selected from a fairly large and varied society in which their minds have become enlarged, and they are consequently less the slaves of caste feeling or personal influence than elsewhere in the Mofussil. The elements required to enable the system to work successfully appear to the Governor in Council to be—(1) a tolerably large and mixed community; (2) a fairly high standard of general education; (3) a competent Bench and Bar. On this last point I am to observe that Mofussil Judges in this Presidency having had absolutely no practice at the Bar must necessarily, as a rule, be inexperienced in the task of addressing a jury effectively. The oral exposition of legal principles and the effective presentation of the results of a large mass of contradictory evidence require special ability or special training, which is not under present circumstances attainable in India. The whole experience of Mofussil Judges in this Presidency, in the civil cases which form the great bulk of their work, is gained in dealing with them unaided by jury or assessors on their own judgment the reasons for which they give in writing. The judgments are subject to appeal, except in petty cases. In this way there is a very effective administration of justice. The points of fact and law are publicly argued in all important cases twice over, and carefully examined in recorded judgments. It can hardly be asserted that, from the purely judicial point of view, the method of investigation which has been found most effective in civil cases is not also the best for criminal cases. The ability of the Judges being specially trained to this kind of work naturally succeeds best in it. The carefully written judgment of a responsible officer in a criminal case, free from the slips of an oral charge and subject to appeal, affords generally a better prospect of exact justice than the verdict of a jury. For this reason, then, the extension of the jury system does not appear desirable. Moreover, the Governor in Council is not aware that in those parts of this Presidency in which the jury system has not been introduced there is any public call for it, and it is only in response to such a call that the system ought to be introduced. Again, the desirable intermixture of classes of the community qualified to serve on juries is not found in the districts to which the system has not yet been extended, and even in some of the places where juries are now employed a complaint is made that the local sentiment against taking life renders convictions very difficult of attainment.

9. Where, however, the jury system exists, it ought not, in the opinion of the Governor in Council, to be abolished, except on clear proof, for the particular Sessions Division, of flagrant abuse or failure. Where it is retained, all cases committed for trial and triable exclusively by the Sessions Court ought, in the opinion of the Governor in Council, to be tried by jury, with the exception (by mere omission) of political cases, and of those relating to the Army and Navy. In particular Sessions Divisions there might be an exception also of capital cases, but this is an exception that should be cautiously made. In Ahmedabad, at least, and possibly elsewhere the exception of capital cases may be forced upon Government, but it must be remembered that any marked increase in the proportion of convictions resulting from the abolition of the jury system might tend to diminish confidence in the administration of justice. On the other hand, if there were no great increase, the change would be of no effect in making crime more perilous to the criminal. At the same time the present system is not devoid of scandal, as shown by the Judge of Ahmedabad. Mr. Fulton mentions a case tried by him this year in which the jury acquitted of murder, and on the same evidence he convicted the accused of culpable homicide not amounting to murder, under section 304 of the Indian Penal Code, and the conviction was upheld on appeal, although the same jury as assessors gave their opinions by a majority of 4 to 1 in favour of acquittal.

10. The Governor in Council, I am to add, considers that it might be desirable, as a measure of practical administration, to have an annual report from each Sessions Court in which juries are employed, on any features of their working which seem to the Sessions Judge to be worthy of remark. On these might follow an annual revision and republication of the list of cases triable in each Sessions Division by jury. The system could thus be expanded or contracted according to the results of experience, without provoking particular comment. The reports should be sent through the High Court, in order that Government might have the benefit of the higher view and wider experience of the Judges sitting there.

11. The above, I am to state, are the principles on which this Government is disposed to proceed in dealing with the system of trial by jury. The Governor in Council will, however, await the views of the Governor General in Council in reply to this letter before taking any action upon them.

From C. H. Jopp, Esq., Acting Registrar, High Court, Appellate Side, Bombay, to the Secretary to the Government of Bombay, Judicial Department,—No. 2003, dated the 26th September 1890. No. 15.

With reference to your office letters No. 249, dated the 16th January 1890, and No. 3784, dated the 15th July last, I am directed to forward copies of the minutes recorded by the Honourable the Chief Justice and Judges, and of the letters of the Sessions Judges consulted on the subject of the working of the system of trial by jury.

Minute by the Honourable the Chief Justice, Bombay (Sir Charles Sargent.) No. 16.

The statistics provided by the Under Secretary to Government, as well as the Reports of the Sessions Judges, shew that where the jury system prevails there is a smaller proportion of convictions in murder and other serious cases; but this, I apprehend, must have been expected would be the result when the jury system was introduced, whilst a compensating advantage was doubtless hoped for, which there is no reason to suppose has not been attained in the increased satisfaction with the administration of criminal justice amongst the public generally. The important question is whether the working of the jury system has so seriously affected the administration of justice as to make it in a higher degree necessary to revert to trial with assessors, as otherwise I think any change is much to be deprecated. The reports of the Sessions Judges with respect to all the districts, except Poona and Thana, can scarcely leave any doubt that the system, whether from timidity, want of intelligence or the influence of religious or other prejudices amongst the ordinary run of jurymen, has seriously interfered with the punishment in murder cases, but we have no materials for knowing whether it has failed to such an extent as to create public dissatisfaction, a matter which, in my opinion, it would be advisable for the Government to enquire into before dealing with the question from a purely executive point of view. As to the remedies which have been suggested for improving the working of trial by jury, such as a more liberal exercise of the powers conferred by section 307, Criminal Procedure Code, on the Sessions Judge and the High Court, or by raising distinct issues for the finding of the jury, they are, in my opinion, both objectionable. The former would weaken the sense of responsibility amongst jurors, the great importance of which for the efficient discharge of their duties was strongly insisted on when the practice of this Court was established of not interfering with the verdict except when it was manifestly wrong. It would be better to abolish the system than to reduce it to a farce. The latter remedy would merely complicate the procedure and give rise to additional opportunities for taking legal objections of which the defence would not be slow to take advantage. It is doubtless to be regretted that the system was not introduced with greater caution, but having been introduced I would deprecate any change unless the Government is convinced of its necessity after a careful consideration of all the elements (of which the trial of criminals is only one) which determine the practical efficiency of the administration of criminal justice.

Minute by the Honourable Mr. Justice Birdwood. No. 17.

The experience that has now been gained of the working of the jury system in this Presidency shows that some modification of it is necessary. Its introduction was regarded as a step in the political education of the people; but in taking that step, we began, as Dr. Pollen, the Sessions Judge of Belgaum, puts it, "at the wrong end." Instead of adopting the Madras plan, which strictly confines the class of offences triable by jury to certain offences against property of which theft is an element, or of entrusting to juries, as we might well have done, the cognizance of those Sessions cases only for which a comparatively light scale

of punishments is provided, we proceeded on a very different principle. The classes of offences triable by jury in this Presidency are not the same in all Divisions into which the jury system has been introduced; but, as pointed out by the Government of India in their letter No. 741 of the 31st May 1890, a copy of which has been lately sent to us by Government, "wherever the system has been introduced at all" in this Presidency, "murder is one of the offences of which juries take cognizance." "This," it is added, "is all the more remarkable, seeing that cases of homicide have been carefully excluded in Madras and the North-Western Provinces, and that one of the objections most strongly urged against juries is the reluctance of a native juryman to convict when there is any possibility of a capital sentence being passed." Juries have shown such a reluctance in the Ahmedabad, Surat and Belgaum Divisions; but the jury system seems to have worked quite satisfactorily in the Poona and Thana Divisions. Mr. Whitworth, the late Acting Sessions Judge of Thana, expresses the opinion that "the system has worked as well as the authorities which introduced it could expect," and that the statistical results indicated in Mr. Heaton's note are not surprising. He says it was a matter of course that the percentage of convictions under the jury system would diminish, and this for two reasons. First, that the jurors being less accustomed than the Judge to estimate the value of evidence would oftener be in doubt what conclusion to arrive at, and every doubt naturally tends in favour of the accused. And, secondly, the jurors being not trained to regard crime from a public point of view, but being only called upon very occasionally to determine a particular case, are more liable than a Judge to be influenced by considerations of the effect of their verdict upon the individual fellow-citizen they are called upon to try. For these reasons Mr. Whitworth thinks it was to be expected that juries would often acquit where a Judge would convict, but he has not met with any instance in which a jury has returned a verdict either wilfully wrong or indicating an absolute inability to appreciate evidence. The system may be taken to have been introduced into British India rather for political reasons than in the hope of securing thereby an improvement in the administration of justice. The reasons for its adoption are not weaker than they were 23 years ago; and its withdrawal now would cause great dissatisfaction. Nor is its entire withdrawal necessary on judicial grounds. The Code of Criminal Procedure already provides, in section 307, for the prevention of failures from utterly wrong verdicts, and it would be advisable, I think, as suggested by Mr. Justice Telang to require Sessions Judges to state clearly in their charges to the jury the points for determination in each case, in the terms of the definition of the offence under trial. A verdict should be taken on each issue of fact and on the cases for the prosecution and defence generally. What is desirable is, not the withdrawal of the system, but its improvement. In the Ahmedabad, Surat and Belgaum Divisions, I would withdraw cases punishable with death from the cognizance of juries. In the Poona and Thana Divisions I would extend the system to all cases committed to the Courts of Session for trial. Copies of the reports received from Messrs. Aston, Hammick, Crowe, Whitworth and Pollen should be forwarded for the consideration of Government.

The 9th August 1890.

No. 18. *Minute by the Honourable Mr. JUSTICE PARSONS.*

So much has been written on this subject that it is hardly necessary for me to minute at all. I wish, however, to record my opinion, arrived at from my experience as Sessions Judge of Thana and as Judge of this Court, that the system of trial by jury has worked and does still work quite as well if not better than it was ever expected to do, and that it should not, in the case of any offence that has been made triable thereby, be lightly abolished. No doubt in the first instance it would have been better to have introduced it in the trial of minor offences, and then gradually extended it in those districts which were found sufficiently advanced. Undeniably, however, the system as at present in force works very well in some districts. In these no change should be made. In others it is said with good reason that with regard to the trial of certain offences it does not work well. I am not one of those who believe that the remedy for this is a reference to the High Court. This reference is a special provision, only to be employed in special cases under an ordinarily well-working system of trial by jury. My opinion is that whenever it is found in a district that the opinions held by the inhabitants thereof are such as to render it impossible to obtain, after due exercise of the right of challenge, an impartial jury, *i. e.*, jury who will return a true verdict according to the evidence, for the trial of a particular offence, trial by jury in that district for that offence should be abolished. The Sessions Judge of the district is the best judge as to whether such a state of things exists or not. In no case, however, should trial by jury once intoduced be lightly abolished, rather I think it should be extended as much as possible, for there can be no question, that

the verdict of a Judge and jury inspires a confidence and carries with it in public opinion a weight far greater than that of a Judge and assessors or even than of an Appellate Bench of this Court.

The 27th August 1890.

Minute by the Honourable MR. JUSTICE CANDY. Nos. 19—21.

We are asked to favour Government with any observations or suggestions we may think fit to record on Mr. Under Secretary Heaton's note regarding trial by jury in the Presidency Proper.

2. Mr. Heaton quotes statistics to show that the proportion of convictions in murder cases tried by jury is unduly low. The observation I would record on this point is that it is notoriously unsafe to rely very much on mere figures. It may be pertinent to ask, does the number of convictions given by Mr. Heaton mean the convictions in the Sessions Courts, unaffected by reversals in the High Court? Possibly some acquittals by juries not interfered with by the High Court would, in former years, have been convictions reversed on appeal. Again, the statistics given by Mr. Heaton afford some considerations which Mr. Heaton has not prominently noticed. There he says that 35·6 may be taken as a fair average of convictions in murder cases for a district where the jury system has been in force for many years, and where a more intelligent class of jurymen than in any other part of the mofussil is obtained. Yet he shows that in the Panch Mahals and Kaira in the six years (1881—86), where there was *no* trial by jury, the percentage of convictions in murder cases was only 33·3, and he says that a fair average rate should be 43·1. This shows that the peculiarities of each district have to be taken into consideration, and that possibly for many years it has been the custom for the police in Kaira and the Panch Mahals to send up many cases in which no Judge could convict. So, too, quite apart from trial by jury, there are great differences between different years. Thus in the districts in which there has never been trial by jury in the years 1881—84, the percentage of persons convicted in murder cases tried by Sessions Courts was 57·8, in 1885—88 it was 45·2.

3. As illustrating the dissatisfaction with trial by jury, Mr. Heaton quotes a paragraph from the report of the Inspector General of Police for 1888, regarding a case committed to the Poona Sessions Court. As I was the Sessions Judge who tried the case, I sent for the record and I find that the remarks of the Superintendent of Police and of the Inspector General are not borne out by the facts. It is to be regretted that Government should be asked to rely on inaccurate and *ex-parte* statements of this nature. I have embodied the true facts of the case in a separate minute.

4. But putting figures and particular cases aside, it is impossible to read the opinions of such experienced Sessions Judges as Messrs. Pollen, Hammick, Fulton and Aston, without seeing that trial of murder cases by jury is often regarded as unsatisfactory. It has been suggested as a remedy that cases of murder and culpable homicide should be excluded from the cases triable by jury. There is no doubt that such a remedy would be considered by the native public as a retrograde measure and would cause dissatisfaction. Possibly it would have been better had the Madras rule been followed on the introduction of trial by jury in this Presidency; but this was not done, and, therefore, we should first do all that is possible to educate mofussil juries up to their duties before removing cases from their cognizance.

5. Again, if murder and culpable homicide cases are to be excluded, what cases are to be left for trial by jury? All other Sessions cases? Except in Poona and Thana the jury lists are probably not large enough to bear this strain.

6. Again, if we begin to exclude, should we not also exclude cases of dacoity for the very opposite reason for which it is proposed to exclude murder cases? I am not sure whether this point has struck Sessions Judges in this Presidency. In Bengal an experienced Sessions Judge (Mr. Beighton) has written (*Calcutta Review*, January 1888, page 156): "But it is not only because of the improper acquittal of offenders against the person that I look upon the jury system as leading to miscarriage of justice. I consider that in the case of habitual offenders who are committed to the Sessions for the crime of house-breaking or larceny from the person the very opposite defect is manifested. I emphatically assert that offenders of this nature are not so secure of a fair trial as if they were tried by the Judge singly. * * * . In cases of theft and house-breaking the facts are generally amply substantiated, and no practical injustice arises. In dacoities, however, or gang robberies accompanied by violence, where a large number of persons are placed in the dock, it is not unusual for the police to include among the real offenders old convicts who are innocent, and in such cases when the prosecution is based on an assumed recognition of each individual during the outrage by the sufferers, I believe that the previous conviction, which, as I have shown, it is practically impossible to shut out from the

knowledge of the jury, does operate prejudicially to the interests of the accused. The only instances in which I have occasionally felt some hesitation as to the correctness of a verdict of guilty are of this nature."

I have had a similar experience. There is no doubt that the fact that many dacoities have occurred in a district creates a kind of panic; and juries and assessors are inclined to convict in doubtful cases.

7. I am of opinion that the primary remedy for unjust acquittals or convictions is the same. In either case, and whether the case is tried with assessors or jury, the responsibility rests with the Judge. *If it is necessary for the ends of justice, he must disagree,* and in jury cases he must refer to the High Court.

8. The answer which has been made to this by Sessions Judges is that "having regard to the principles which the Honourable Judges of the High Court have laid down for the disposal of such references, it is not advisable to refer such cases." I think that the above is a mistaken view of the law.*

It was pointed out to a Sessions Judge who made the above remark that "whenever you so completely disagree with the verdict of a jury in any case as to consider it necessary for the ends of justice to submit the case to the High Court, *it is your duty* under section 307 of the Criminal Procedure Code to do so."

The Sessions Judge replied that where a verdict is not perverse or unreasonable he *subordinates his own opinion to that of the jury.*

In my opinion that view is wrong. The law does not entrust him with the duty of saying whether the verdict is perverse. The law says that if in his opinion to follow the verdict would cause a failure of justice, he is bound to refer. Of course in forming that opinion he is bound to give due weight to the verdict, but if trying the case with five jurors as assessors he would have thought it necessary for the ends of justice to convict, then sitting with a jury, he *must* refer.

9. Should the High Court not agree with the view taken by him, that should make no difference to him; he is bound to obey the provisions of the law. As West, J., said in Regina *versus* Khanderao "the Judge may differ from the jury as to the facts, and the duty of dealing with a case of that kind is then cast upon the High Court * * * . The functions both of the Judge and jury are cast upon the Court, and this differentiates our position very widely from that of the Courts in England."

I. L. R., I, Bo., at page 13.

10. No doubt there are expressions to be found in reported cases which, when taken alone, seem to show that undue weight has been given to the opinion of the jury simply because it is their opinion. But numerous cases could be quoted which show that upon a reference under section 307, the High Court considers the whole case to be opened up and the evidence is all weighed and appreciated on the merits. This is clearly brought out in the oft-quoted case of Regina *versus* Khanderao in which the verdict of the jury was reversed. The law in this Presidency may be taken now as settled by the judgment of the Chief Justice in Imperatrix *versus* Bai Jiba *et al* which was delivered last year. It is to be regretted that this case has not been reported, or at least the judgment of the Chief Justice. I append A, an extract of the important portion. It shows what was really the gist of the remarks of West, J., in Regina *versus* Khanderao, and that the practice of Courts in England in interfering with the finding of a jury cannot be resorted to as affording a fixed rule in the exercise of the powers conferred on the High Court by section 307. In the same way in Calcutta in Queen *versus* Hari Prasad, Mr. Justice Jackson considered "the assumption quite unfounded" that "the trial by jury spoken of in the Code of Criminal Procedure is the system of trial by jury prevalent in England except where and in so far as it is expressly modified by the provisions of the Code," and he held that proceedings in trials by jury in the Sessions Courts "ought not to be examined by the light of English rules of procedure."

I. L. R., I, Bo., at page 10.

8 B. L. R., at page 562.

11. So, too, in Imperatrix *versus* Itwarisaho, the judgment of Prinsep and Pigott, JJ., shows that the language of West, J., in Regina *versus* Khanderao, was "carefully guarded," and that there are no "authorities for the position that the Court, although disagreeing with the verdict, will not set it aside unless it appears to be perverse." That is very different from no

I. L. R., XV, Cal, 269.

* Since writing the above, I see that the Madras High Court, Sir A. Collins, Chief Justice, and Handley, J., have adopted the same view. The discretion, it is said, of referring a case under section 307 should always be exercised when the Judge thinks that the verdict is not supported by the evidence.—Indian Law Reports, XIII, Madras, 343.

interfering with the verdict of a jury "except when it is shown to be clearly and manifestly wrong." This latter dictum merely means that the whole case is opened up and that the High Court have to see whether the verdict is according to the evidence. Thus, in the very case from which the above expression is taken, Imperatrix *versus* Mania, the Judges of this Court carefully appreciated the evidence and decided that "the only reasonable conclusion to arrive at is that which the jury have come to." Other cases could be quoted. Thus in Reference 178 of 1888 from Ahmedabad, Imperatrix *versus* Desai Daji *et al*, decided 18th February 1889, this Court refused to interfere with the verdict because it was in conformity with the weight of the evidence. So, too, in Reference 10 of 1889 from Belgaum, Imperatrix *versus* Padmana *et al*, decided 4th March 1889. And again in Reference 185 of 1888, from Ahmedabad, Imperatrix *versus* Daji Lakha *et al*, decided 25th March 1889, this Court refused to interfere, though it said "we think the Joint Sessions Judge was *quite right* in referring the case under section 307."

I. L. R., X, Bombay, 497.

12. These cases shew that when the Sessions Judge disagrees so completely with the verdict of the jury that in his opinion it is necessary for the interests of justice to express his disagreement, in other words, when after giving due weight to the opinion of the jurors as assessors he would have convicted the accused, then it is his bounden duty to refer the case. It is *not his* duty to say whether the verdict is "perverse." It is impossible to say how many guilty persons have been wrongly acquitted, because the Sessions Judges refused to refer their cases under section 307. Therefore, my suggestion to Government is that they should urge the Sessions Judges to obey the provisions of the law as indicated above. When that has been done for a year or so Government will then be in a position to consider finally whether murder cases should be excluded from cognizance by juries.

13. There is another suggestion which I think may be carried out when next any amendment is made in the Code of Criminal Procedure. If an analogy can be sought for from English Law, then the nearest approach to a reference under section 307 is when a case is referred by the trying Judge to the Court for consideration of Crown cases reserved. In such cases *after* a verdict has been given the Judge can ask the jury for findings on certain facts to guide him in his reference.

In the same way a provision can be inserted in section 307 empowering the Sessions Judge, when he disagrees with the verdict of the jury, to ask them for findings on certain facts. The questions put to them should be recorded in writing, and the jury should retire before giving in their answers, so that there may be no appearance even of the browbeating on the part of the Judge. It would be very easy for the Judge to frame the questions in such a way that the answers may give him invaluable help in showing the reasonableness of the verdict or otherwise.

I have for several years felt the necessity of some such provision. I see that in Bengal the Sessions Judge abovenamed (Mr. Beighton) is of the same opinion. I append (B) an extract from his article in the *Calcutta Review*. It is obvious that the reasons which guide a jury to a certain conclusion are the most important elements to consider in arriving at a conclusion whether a verdict is reasonable or not. If a Sessions Judge is bound to record the opinions of assessors, though he is not compelled to conform to them, it is equally important for him and for the High Court to know the findings of the jury on the leading facts from which the guilt or innocence of the accused must be inferred.

14. There is not, I believe, any reported case in this Presidency on the subject. As Sessions Judge of Poona in an important case (Regina *versus* Rupya Wd. Shiva) I asked the jury for their findings on certain facts, and on a reference to the High Court under section 307, the Judges said—"The Court thinks that the interrogation of the jury after delivery of their verdict is highly inexpedient except in a way to a solution of difficulties which have embarrassed them." In Bengal, in Queen *versus* Mea Jan, the High Court said:—

20 W. R., Cr. R., 50.

"Let the Judge be informed that he ought not to put questions to any of the jury as to the reasons for the verdict he has given;" and in Imperatrix *versus* Dhanam Kazi, Norris, J., said "the Sessions Judge had no right to put questions to the Jurors." On the other hand in the Queen *versus* Udya, the Judges remarked that "the (Sessions) Judge never took the trouble to ascertain on what ground it was that the jury arrived at the verdict which they gave," and in Imperatrix *versus* Mukhin Kumar, Prinsep, J., held that the law did not prevent the Sessions Judge from questioning the jury as to the grounds on which they based their verdict.

I. L. R., IX, Cal., 53.

20 W. R., Cri. R., 73.

I. L. R., 1 Cal., 275.

No one can help agreeing with Phear, J., in Queen *versus* Surtram that it would be very dangerous to give the Sessions Court the power of cross-examining the jury after they have delivered their final verdict. That is why I suggest that the Sessions Judge should be merely empowered to ask the jury for findings on certain facts. That would meet Mr. Aston's objection that the High Court have only the *ipse dixit* of the jury, and is better than Mr. Hammick's suggestions that the jury should consist of 12 (this is practically impossible), and that each juror should give his verdict confidentially to the Sessions Judge without consulting his brother jurors.

21 W. R., Cri. 1.

The 28th June 1890.

15. Since writing the above, I have seen the letter from the Government of India, No. 741, dated 31st May 1890, and the forwarding letter from the Bombay Government, No. 3784, dated 15th July 1890. We are asked to principally direct our attention—

(1) To the general question of the relative advantages and disadvantages of the system of trial by jury as it exists in this Presidency;

(2) To the special question whether juries show an undue tenderness or timidity in dealing with cases of murder;

(3) To any suggestions which our experience may have shown to be desirable for the modification of the present system which divides cases triable by a jury from those not so triable according to degrees of punishment.

16. On the first point, I am not aware of any special advantages in trial by jury. I have never heard of any one arguing that it has peculiar merits as a means for the repression of crime. I apprehend that it was introduced for political reasons. Extension of trial by jury is generally a plank in the platform of all native associations (Congress, Sarvajanik Sabha, etc.). It is supposed to be a sign of healthy self-government. For this reason, I said above that to curtail the system would be regarded as a retrograde measure, and should be avoided if possible, and I suggested certain remedies to be first tried.

17. The disadvantage of the system is that in the opinion of many experienced officers juries are unduly anxious to acquit, especially in murder cases. This embraces the second point noted above. The fact is notorious—see the opinion of the Sessions Judge of Ahmedabad at I. L. R., X, Bo., page 499. Also in my opinion juries are sometimes apt to unduly convict in dacoity cases, and in cases in which old offenders have been committed for trial. Therefore, though it may eventually be found necessary to exclude murder cases, and perhaps other cases also, from the cognizance of juries, I recommended that at present, in the case of all erroneous convictions or acquittals, the provisions of section 307, Criminal Procedure Code, should be persistently followed. In all such cases the High Court would take into consideration the natural tendencies of native jurymen.

18. As to modifying the system by which cases are divided according to the degrees of punishment, it must be remembered that one important factor has to be considered, and that is the number of available jurors at the head-quarters of each Sessions Court. For instance, I doubt whether in Thana it would not be an intolerable hardship to the jury list to make all cases committed to the Court of Session triable by jury. Again, to take the Madras list, quoted in the Government of India letter, of the numerous sections quoted, eleven only relate to offences triable exclusively by the Court of Session. Committals in other cases, therefore, would be generally of old offenders. The Bengal list is very wide, Chapters 16, 17 and 18 of the Indian Penal Code covering important and numerous cases. I doubt whether in Bombay Presidency we have large enough jury lists to include all such cases. On the whole, I am of opinion that, if any change is to be made, the degrees of punishment should so far be considered that jury cases should be limited to cases triable exclusively by the Court of Session. Otherwise, I would regard the nature of the cases, *e.g.*, the offences of kidnapping, abduction, rape, and offences relating to marriage, being especially suitable for trial by jury. The list for any Sessions Division should not be such as to prove a burden on the list of jurors.

The 11th August 1890.

A

Judgment of the Chief Justice in Criminal Reference 166 of 1889, IMPERATRIX versus BAI JIBA, et al.

The finality of the verdict of the jury is, by section 307, Criminal Procedure Code, made subject to the power to Sessions Judge who presides at the trial when he disagrees with the verdict of the jurors so completely that he considers it necessary, for the ends of justice, to

submit the case to the High Court, who are, in dealing with the case, to exercise any of the powers which it may exercise on an appeal. This is a most important departure from English law and practice, and was undoubtedly dictated by the circumstance that trial by jury in this country was an experiment which it was necessary to safeguard against a miscarriage of justice, by allowing the case to be referred under certain circumstances to the highest judicial authority. There is, therefore, no true analogy between the discretionary power thus conferred on the High Court under the above section and that which the Courts of law in England have sparingly exercised in interfering with the finding of a jury in civil actions by directing a new trial on the ground of the verdict being against the evidence, and the practice therefore of the latter Courts, although very properly regarded as a guide, cannot be resorted to as affording a fixed rule in the exercise of the powers conferred on the High Court by section 307. This is, I believe, the gist of Mr. Justice West's remarks in Regina *versus* Khanderao (I. L. R., I, Bom., page 13). However, I entirely agree with Mr. Justice Nanabhai, whose long experience is entitled to great weight, that it has been the uniform practice of this Court not to interfere with the verdict of a jury except when it is shown to be clearly and manifestly wrong. Queen-Empress *versus* Mania Dayal (10 Bom., I. L. R., page 502) and such practice ought, in my opinion, to be followed.

* * * * * * * *

* * * * * * * Upon the whole of the evidence, I am of opinion that the guilt of Dada at any rate is so clearly made out that it becomes the duty of this Court to set aside the verdict of the jury and find the second prisoner guilty of murder.

B.

Extract from Article in " Calcutta Review," January 1888, page 167.

The most important suggestion I have to offer is, however, one which concerns the second of the two aims above specified, and will, it is hoped, commend itself both to official and native opinion. There is a clause in the Code of Criminal Procedure which enacts (section 303) that " the Judge may ask the jury such questions as are necessary to ascertain what their verdict is. Such questions and the answers to them shall be recorded."

The meaning of this section has been variously interpreted. By some Benches of the Calcutta High Court it has been held that when the verdict was clear and unmistakable, a Judge was not justified in asking the jury the reasons for their verdict. Such a course was looked upon as outside the scope of a Judge's functions, and the answers to such questions have not been regarded as contributing a part of the materials on which the High Court will decide whether to accept the verdict or not. But as long as the right of interference with a verdict exists, it must be obvious that the reasons which guide a jury to a certain conclusion are the most important elements to consider in arriving at a conclusion whether a verdict is reasonable or not. I consider the law should be amended in this respect and that a Judge should be bound to enquire, after every verdict, the grounds on which a jury find the accused guilty or not guilty. In the former case the public may fairly demand that the jury should be required to state the reasons for considering the accused guilty of the crime with which he is charged. In the latter case the Crown may fairly demand that the grounds of acquittal should be stated It may often happen that a Judge who is at first sight disposed to differ from a verdict of acquittal, may, after considering the reasons assigned, come to the conclusion that they are reasonable. On the other hand, if the reasons are manifestly unsound, if they betray either a gross misconception of fact, or the existence of prejudice, the educated native public would themselves, it is to be hoped, prefer that they should be brought to light and be subjected to the criticism of the higher authorities. Assuming the fitness of the native community in the seven jury districts for the performance of this function, there can be no impropriety in placing on record the considerations by which in each case they are actuated. Lastly it would greatly assist the High Court in the discharge of the difficult task imposed upon them under section 307, Criminal Procedure Code. The Judge is already bound to record the opinions of assessors, although he is not compelled to conform to them. He is, however, bound to give effect to a verdict of a jury unless it is perverse or unreasonable, but to decide as to the perversity or unreasonableness of a verdict, without knowing the reasons which guided the jury to it, is, it appears to me, mere groping in the dark.

No. 22. *Minute by the Honourable Mr.* JUSTICE FARRAN.

It is in my opinion going too far to say that there are no special advantages in trial by jury. When a Judge and jury work harmoniously together, and the evidence is carefully sifted by the Judge in his charge, and the true issues which arise are pointed out to the jury, the verdict of the latter, *when not influenced by extrinsic cause* by reason of the local knowledge they possess, and their more perfect acquaintance with the habits and customs and modes of thought of the accused and of the witnesses examined before them, is more likely to be correct than the decision of a Judge, though the latter approaches the consideration of the case with a more trained intelligence and possibly a more logical mind but with a less accurate perception of native life and native thought. In an ideal trial the charge of the Judge, simple, clear and logical, ought to supply the analytical discrimination which is often lacking in the untrained intelligence of the juryman. The special attributes of each supplement the deficiencies of the other.

Mathematical correctness cannot be always expected in criminal trials, and when the issue is doubtful, wrongful acquittals and wrongful convictions from time to time occur. It seems to me no light advantage in such cases that the responsibility should rest on a popular body like a jury, rather than on a representative of the State. The error in the one case is the error of the community, in the other, that of Government, or is so regarded. The same advantage accrues when, though the issue of a case is correct, popular feeling regards it as erroneous.

The dispensing power which juries sometimes exercise in criminal trials, under the guise of giving the prisoner the benefit of the doubt, is also, I think, when not pushed too far, a merit in the system. To these must be added the political advantages or supposed political advantages of the institution, upon which it is not our function to dwell, but which may be easily overrated. They ought not to weigh in the scale, if increase of crime, which invariably follows upon uncertainty of conviction and punishment, is the direct result of the retention of the system. The demerits of the system are attributable rather to defects in its working than to any default in the system itself.

Judges are not always in sympathy with the jury, and the two do not invariably work harmoniously together. Hence the appearance of browbeating which Mr. Justice Telang regards as a real danger. A Judge ought to be able to influence a jury without showing any appearance of dictation.

Juries are not unfrequently influenced by extrinsic causes. When this is the case or, from *a priori* reasoning, is likely to be the case, the *raison d'être* of the institution is gone. Judges and juries cannot be in accord. They approach the question from different stand points. I refer not to extrinsic causes which apply only to an individual, but to those which influence juries in a whole class of cases, *e.g.*, those punishable with death.

It is impossible, I think, to give a categorical answer to the second question propounded for our consideration. Even in this Presidency the religious and moral feelings of the natives of the country differ so widely, that an undue tenderness or timidity on the part of juries in dealing with cases which involve a capital sentence may exist in some localities and may be almost entirely absent in others.

It might, I think, have been predicated with reasonable certainty that the introduction of the jury system into the Ahmedabad and Surat Districts in capital cases would be disastrous to the ends of justice. The known antipathy of a large proportion of the inhabitants of those districts to inflicting or causing the infliction of death in any shape or form might, I think, have led to the *a priori* conclusion that the jury system applied to murder cases would not work there. In the Bombay High Court, to which my experience is principally limited, it has long been recognised that the presence of a native of Ahmedabad or Surat (of a certain class) upon the jury meant a division on the verdict even in clear murder cases. Hence it is not unusual for the Crown in such cases to challenge such jurors. If this is the case in Bombay where the juror is removed from his own, and surrounded with a different atmosphere of thought, what must be the case in the districts themselves? If from *a priori* reasoning you turn to the figures of Mr. Heaton, the opinions of the Sessions Judges of Ahmedabad and Surat, the actual result is exactly what might have been expected. The jurors are placed in a false position. Their religious and moral perceptions are at variance with their duties and oaths as jurymen, and the result is such as might have been anticipated—uncertainty in the administration of the law. So far from its being desirable to retain the system in these districts, I consider it ought to be at once done away with in capital cases. To retain it is an injustice to jurors themselves, or a large proportion of them, and, so far from being a means of imbuing them with a sense of responsibility and strengthening their moral perceptions, it has precisely the opposite effect. Every verdict they delivered in a clear case, whether of conviction or acquittal, is a compromise in their own conscience.

The above remarks apply, but in a modified degree, to the Belgaum District where the Sessions Judge reports against the jury system when applied to capital cases.

In Poona and Thana the system apparently works as well as its introducers could have reasonably expected. Mr. Crowe is satisfied with its working in Poona, and Mr. Crawford with its working in Thana. The averseness to the taking of life does not largely prevail in these districts. Had this matter been *res integra* I should have agreed with the view that a beginning has been made at the wrong end, and that in all districts murder cases should have been excepted from the jury system until from the general working of it on less important cases it was found that it could be safely extended. As it is it would be undesirable to make any change in Poona and Thana. In the other districts, I should at once adopt the view of the District Judges and apply the system to all Sessions cases except murder and culpable homicide.

As to improvements in the system, I do not quite coincide with Mr. Justice Candy in thinking that a more general practice of sending up cases to the High Court under section 307 of the Criminal Procedure Code is desirable or would be attended with good results. While it is well that in exceptional cases Judges should have that power, its frequent exercise would tend to weaken the responsibility which a jury ought to feel in giving their verdict. The jury would not unnaturally consider that in (to their minds) doubtful cases the ultimate responsibility would rest on the Judge and High Court, and the tendency to acquit would increase. I should rather impress on Sessions Judges the importance of their charge to the jury and the desirability of leading them to a correct verdict by laying the facts of the case clearly and logically before them, than the importance of correcting their verdict by a reference to the High Court. It is a doubtful and dangerous expedient for the High Court to set aside the unanimous verdict of acquittal of a jury, on their own appreciation of the evidence of witnesses whom they have not seen or heard. It is, I think, properly resorted to only in extreme cases.

The expedient of examining a jury after verdict, or of framing issues for such an examination, is also, I think, of doubtful advantage. Every addition which adds to the complexity of our already complex judicial procedure is, I think, to be deprecated and ought to be avoided. When a judge and jury can work in sympathy and harmoniously together, having before them the one object, that of arriving at a true decision and verdict, the jury system will be a success. Where that cannot be hoped for, it should be done away with. It is useless to expect the same results from multiplying checks and complicating procedure.

Minute by the Honourable Mr. Justice Telang. No. 23.

I generally concur in the conclusions arrived at in this Minute. My experience of mofussil juries and their work is extremely limited, but apart from statistics my general impression, though not very favourable to the working of the jury system, has not been so unfavourable as that suggested by Mr. Heaton's note. But assuming the correctness of what our most careful and experienced Sessions Judges say, I quite agree in the view expressed by Candy, J., about their duty in making references. They must not, as some of them apparently do, think it a reflection on them, if the High Court on the reference declines to disturb the verdict of the jury. I should like, however, to make a suggestion in reference to Mr. Justice Candy's substantive proposal. He himself suggests the possibility of "browbeating" of the jurors by the Judge. What I have heard from time to time about the matter makes me think that this danger does require to be guarded against. How would it do if the Sessions Judge, in cases of trial by jury, were directed always, say, at the close of his summing up, to put to the jury in plain and distinct form what may be called the issues arising in the case, the issues being framed as in civil cases *mutatis mutandis* ? Upon *such* issues, the jury may be asked, in the event of a difference of opinion between them and the Judge, to state their finding, which should be recorded. In addition to these issues there might be one or two more always added—(1) what is your general view of the evidence for the prosecution ? (2) what is your general view of the evidence as to the defence ? These two questions will bring out the views of the jury in those cases in which it is suggested in argument that the jury may have disbelieved the evidence as got up. If the questions to be put to the jury in this way are settled before the supposed difference of opinion arises, there will be less chance of the questions being framed under the unconscious bias of the Sessions Judge's own view, and, therefore, being such as to bring out only what goes to the support of that view.

The 30th June 1890.

No. 24. *Minute by the Honourable* JUSTICE TELANG.

I do not wish to add much to what I have said in my note of the 30th of June last. The observations made in that note, regarding the duty of Sessions Judges under section 307 of the Code of Criminal Procedure, were intended to apply, as they do in terms apply, only to cases in which a Judge, holding the view that the reference provided for by the section is necessary for the ends of justice, nevertheless declines to make such reference because the result of it may, by upholding the view of the jury, involve some sort of reflection on himself. Apart from this consideration, I have no hesitation in expressing my concurrence in the view of Farran, J., that the powers conferred by section 307 of the Criminal Procedure Code on the High Court and Courts of Session must be exercised by both authorities with much circumspection, and in special cases only.

In regard to my suggestion touching the framing of issues, I do not think that it will really involve any substantial increase in " the complexity of our judicial procedure." In all ordinary cases, the framing of issues will be of service to the Judge by enabling him, in the course of his summing up, to marshall the facts in an easily intelligible and logical order, while it will also be of service to the jury by enabling them the more readily to grasp the real points arising in a case, without being misled by side-issues, or bewildered by a multitude of details. In those cases in which the Judge and jury differ, and in which only the jury need be asked to state their findings on the issues framed, there is to that extent an increase of what may be called the complexity of our judicial procedure. But such cases have hitherto been, and, I suppose, will hereafter continue to be, of unfrequent occurrence, and therefore an increase of complexity to the extent indicated need not, I think, be much dreaded.

On the other question raised in these papers, my opinion is that no satisfactory grounds have been shown for interfering with existing arrangements in Poona and Thana. The results are, I believe, as good as could reasonably have been expected. In Ahmedabad, Surat and Belgaum the official reports before us are very unfavourable to the continuance of the jury system in murder cases. I am not satisfied that non-official opinion will go quite as far as this, and I am not disposed to treat all the reports before us as conclusive of the question. But upon the whole, and having regard to the special nature of trials by jury, I think it is desirable that in the three districts named murder cases should not continue to be tried by juries. And in other districts too, whenever the question comes to be considered, it will not be desirable to introduce the jury system, at the first start, in capital cases.

In regard to the extension of the jury system to other than capital cases, I may say that in my opinion the nature of the offence rather than the amount of punishment which may be awarded under the law, should be taken as the guide in fixing the limits of such extension. Offences relating to marriage, to take only one instance, would furnish the appropriate scope for the jury system in its earlier stages, as the investigation of such offences would often involve questions of local or caste usage and kindred matters. The offences triable by jury in the Madras Presidency, as specified in the letter of the Government of India, also appear to me to have been properly selected, though upon a different ground than that above indicated. But it is grounds of this character that should be mainly considered, I think, in making a selection of offences to be tried by juries. The merely mechanical rule of selection based on the amount of punishment does not appear to me to be a good one.

The 27th August 1890.

No. 25. From H. F. ASTON, Esq., Sessions Judge, Ahmedabad, to the Registrar to Her Majesty's High Court of Judicature, Bombay,—No. 314, dated the 19th April 1890.

I have the honour to reply to your letter No. 477, dated 4th March last, requesting my opinion on the working of the system of trial by jury and on the propriety generally of continuing the jury system in this division with or without modifications.

2. Under sections 306-307 of the Criminal Procedure Code the decision of a case tried with the aid of a jury does not rest with the jury. It is decided by " the judgment " of the Sessions Judge when he agrees with the jury or does not think it necessary to disagree with the verdict of the jurors or of a majority of the jurors, or it is decided by the " judgment " of the High Court when the Sessions Judge disagrees with a verdict of the jury and refers the case to the High Court. The Criminal Procedure Code gives no legal force to a verdict with which the Sessions Judge does not agree.

3. But when a case is referred to the High Court under section 307, Criminal Procedure Code, the established practice of the Bombay High Court appears to be to accept the verdict of the jury unless it is shown to be unreasonable and clearly and manifestly wrong. In other words, the verdict is treated as if it were a verdict of a jury in a criminal trial in England

where the Judge is bound to accept the verdict of the jury whether he disagrees with it or not, and passes sentence when the jury convict, leaving it to others to initiate proceedings before another tribunal to disturb a verdict which has legal effect in England until it is set aside.

4. As typical instances of the effect given to a jury's verdict where the Sessions Judge expressed total disagreement, I may cite the cases of Imperatrix *versus* Jiba and another, Criminal Reference No. 166 of 1888, under section 307, Criminal Procedure Code, and Imperatrix *versus* Balakdas, Criminal Reference No. 173 of 1888, under section 307, Criminal Procedure Code, which are cases which I myself referred as Sessions Judge of Ahmedabad.

5. In Imperatrix *versus* Jiba and another, Jardine, J., said : " The Court has, I consider, to give its due weight to (the opinion) of the Sessions Judge and of the jurors who differed from the majority. But as a matter of practice I concur in the words used by Nanabhai, J., in the fully argued case of Queen-Empress *versus* Mania, I. L. R., X, Bombay 497, *viz.*, ' it has been the uniform practice of this Court not to interfere with the verdict of a jury except when it is shown to be clearly and manifestly wrong.'

* * * * * * * * * *

I do not know of any authority which condemns our rule of practice. I am not aware of any good reason for diverging from it, and I doubt whether in any ordinary case a Division Bench ought to do so in the present state of the authorities."

In Imperatrix *versus* Balakdas, Criminal Reference No. 173 of 1888, Jardine, J., said : " The Court is now called upon to consider whether the verdict is so unreasonable or so manifestly wrong that it ought to be reversed."

6. The question then is whether the jury system thus understood is suited to the conditions and requirements of this division.

7. I have no hesitation in stating my opinion, founded upon three years' practical experience in Ahmedabad, that this system is totally unsuitable.

8. Under section 307 of the Criminal Procedure Code a Sessions Judge is bound to refer the case for the decision of the High Court if he disagrees so completely with the jury that he considers it necessary for the ends of justice to submit the case to the High Court. Such being the obligation imposed by the law, a Sessions Judge cannot do more than support the conclusions at which he has arrived by the most cogent reasons that suggest themselves. His reasoned conclusions are based upon the facts he holds proved and the inferences he draws from them and surrounding probabilities. It is impossible for any Judge to make it appear that the mere *ipse dixit* of a jury is clearly and manifestly wrong or unreasonable, when the putting of any questions whatever to a jury, except to elucidate what their verdict actually is, is discouraged, when the jury do not refer to a single fact as proved or in doubt, and do not give the least indication whether any of the evidence is rejected from prejudice or suspicion, or on reasonable grounds, and when the widespread suspicion with which oral evidence is viewed in this country makes it possible to hazard a thousand conjectural excuses for even the most perverse verdict.

9. In Banwari Lal *versus* Hetnarain Singh, 7 Moore, Indian Appeals 148, the Privy Council said : " It would indeed be most dangerous to say that where the probabilities are in favour of the transaction we should conclude against it solely because of the general fallibility of native evidence. Such an argument would go to an extent which can never be maintained in this or any other Court, for it would tend to establish a rule that all oral evidence must be discarded, and it is most manifest that however fallible such oral evidence may be, however carefully to be watched, justice can never be administered in the most important causes without recourse to it."

And in Rama Mani *versus* Kulantbhai, 14 Moore, Indian Appeals 354, Their Lordships said : " The ordinary legal and reasonable presumptions of fact must not be lost sight of in the trial of Indian cases, however untrustworthy much of the evidence submitted to these Courts may commonly be, that is, due weight must be given to evidence there or elsewhere, and evidence in a particular case must not be rejected from a general distrust of native testimony, nor perjury widely imputed without some grave grounds to support the imputation. Such a rejection, if sanctioned, would virtually submit the decision of the rights of others *to the suspicions and not to the deliberate judgment* of their appointed Judges.

These principles can be applied to the written decision of a Judicial Officer, but it is impossible to apply them to the *ipse dixit* of a jury.

In fact there is no basis of comparison between the two, and the Judge who has to make a reference under section 307, Criminal Procedure Code, is placed in an entirely false position because, if the bare opinion of the jurors is entitled to more weight than his own reasoned conclusions, such a reference ought to be superfluous."

10. Another reason against the present system of trial by jury is that jurors are far more readily prejudiced than a trained Judge is by those mistakes which are frequently made in the mode of presenting a case. A judicial Officer is more ready to distinguish between the weakness of a case and the weakness of the manner in which it is conducted, especially where, as in this country, an advocate often insists on pressing forward minutiæ and obscures the really strong points of his case.

11. One of the strongest objections to the jury system is that the jurors have not their responsibility brought home to them here as it is in England, where the evidence produced in serious cases is published in the papers and discussed by numerous readers and the jurors know that an intelligent public is forming its own opinion and will make its voice heard if any occasion arises. There is thus no proper check on undue tenderness and unreasonable suspicion.

12. My own experience leads me to record my opinion that in this country, where there is often room for a wide divergence of opinion as to the credibility of witnessess, any form of procedure which admits of a decision being given unsupported by reasons in a criminal trial is open to grave objection.

It might be made a rule that in capital cases at least five assessors should assist at the trial, and, subject to this proviso, I think that capital cases should be tried with the aid of assessors in this division and not with the aid of a jury.

No. 26. From—S. Hammick, Esq., Sessions Judge, Surat, to the Registrar, Her Majesty's High Court of Judicature, Bombay,—No. 484, dated the 14th March 1890.

As desired in your letter No. 478 of the 4th instant, I have the honour to report on the working of the system of trial by jury in this district.

2. Since 1st March 1885 offences punishable with death, transportation for life, or imprisonment for ten years have been tried by a jury of five persons, all other Sessions cases being tried by the Judge with the aid of assessors.

3. *Trials held under the jury system.*—From the 1st March 1885 up to the present time 68 cases have been tried by juries. In 28 cases the accused have been convicted, in 35 cases the accused have been acquitted, in 5 cases some of the accused have been convicted and others acquitted. There have been 142 persons tried, of whom 45 have been convicted and 97 acquitted. As regards the total number of trials, the proportion of trials resulting in convictions is 41·1, of trials resulting in acquittals is 51·5, of trials resulting in convictions and acquittals is 7·3. The ratio of persons acquitted to persons convicted is 68·3 : 31·7.

4. *Trials held with aid of assessors.*—During the same period, 23 cases have been tried by the Judge with the aid of assessors. In 8 cases the accused have been convicted, in 14 cases the accused have been acquitted, in one case one accused person was convicted and the others acquitted. There have been 41 persons tried, of whom 12 have been convicted and 29 acquitted. As regards the total number of trials, the proportion of trials resulting in convictions is 34·7, of trials resulting in acquittals is 60·3, of trials resulting in convictions and acquittals is 4·3. The ratio of persons acquitted to persons convicted is 70·7 : 29·2.

5. The above figures indicate that although in this district the proportion of acquittals to convictions is high, still there is very little difference in this respect between trials held by juries and trials held by the aid of assessors, *viz.*—

Ratio of persons acquitted to persons convicted in jury cases 68·3 : 31·7.

Ratio of persons acquitted to persons convicted in assessors' case 70·7 : 29·2.

6. *Murder cases.*—When however we come to the trial of cases punishable with death, we find that the facts are certainly worthy of attention. Since the 1st March 1885 there have been 12 such cases tried by juries and every case has resulted in an acquittal. In one case tried before me the jury found, with my concurrence, that the accused was a lunatic; in another case the jury also found that the accused was the victim of homicidal mania. I considered that the grounds were inadequate, and referred the case to the High Court, which finally acquitted the accused person. In a third case, I find that the Judge directed the jury to acquit the accused on the charge of murder. After deducting these 3 cases there remain 9 cases in which the jury unanimously returned verdicts of acquittal. The result of 12 trials for murder is that in every case the accused has been acquitted.

7. After making every allowance for a due or even for an excessive proportion of doubtful cases it is impossible, I think, to avoid the conclusion that there must have been in some of these cases a failure of justice and that the system of trial by jury when applied to cases of murder has not been successful in this district.

8. It may be asked whether the Judge has not failed in his duty in not referring such cases more frequently to the High Court. To this I would reply that in every case the jury has expressed a unanimous opinion, and that unless it can be shown that the jury has perversely or obviously returned a wrong verdict, the Judge is bound to accept their verdict when unanimous, and a reference to the High Court is useless. If the Judge referred every case in which he did not agree with the conclusions of the jury on questions of fact and evidence, he would virtually transfer the trial of the case to the High Court, which I think was not the intention of the legislature.

9. This leads me to remark on the invariable unanimity of juries. The legislature expected that there would sometimes be differences of opinion and has provided for such a contingency by giving effect to the opinion of the majority, but I find that with the exception of two cases tried in April 1885, the verdict of the jury has in every case been unanimous. This appears to indicate that the minorities have not the moral courage to stick to their opinions.

10. The failure to convict in cases in which sentence of death may be passed is not, in my opinion, to be attributed to corrupt or perverse motives. The reluctance of a Hindu to take life or to undertake the great responsibility of condemning a fellow-creature is worked upon by the defence by the old arguments that it is better that a hundred guilty persons should escape than that one innocent man should be punished; and that the prisoner should have the benefit of the doubt, and in this way the juror is pursuaded that it is his duty to require a certainty which in the trial of criminal cases is practically unattainable.

11. For my own part I should be in favour of a system of trial by jury where the conditions are favourable. But it cannot be said that such is the case in this district. The number of persons competent to perform satisfactorily the duty of a jury is limited. The list in this district contains 116 names. It has therefore been directed that the jury shall be composed of five persons only. But it seems clear that in proportion as the number of the jury is reduced so you will require better quality in its component members. The verdict of 12 average Englishmen may not be always infallible, but it stands on quite a different footing from the verdict of a majority in a jury of five Surat gentlemen. As the number of a jury is diminished, so I believe the weight of any influential individual member will increase. It is probably easier for one man to influence four than to influence eleven colleagues, and I have had occasion to feel that the accused was being tried not by a jury but by one member of the jury; when I say this I have no intention of suggesting corrupt influences, but that in a jury composed of five persons any one influential member has an undue weight and influence.

12. It is possible, I think, that this defect might be in some measure remedied by a change of procedure. I would suggest for this purpose that jurors should not be permitted to retire to consider their verdict; but that each juror should be required to write his decision in his place in Court on a piece of paper, which should be handed to the Judge, who would thus gather what is the verdict of them all. The Judge should be bound to regard the opinions as confidential, and the papers might be sealed up until the expiration of the time for appeal and then destroyed. This however is outside the scope of the report now called for.

13. As regards the question whether or not the present system of trial by jury should be maintained in this district or abolished or modified, I am respectfully of opinion that in this district a Judge, if he is assisted by intelligent assessors and takes the trouble to elicit their opinions, forms a better Court of Justice than a jury of five irresponsible persons for the trial of all cases and especially for the trial of offences punishable with death. I am also not aware why, when the system was introduced, it was at once applied to the class of cases which most severely taxed the qualities of the jurors.

14. Trial by jury is, however, popular with the English-speaking community, and its abolition would be regarded with disfavour as a retrograde step. Nevertheless the impunity which the system seems to afford to murderers is a fatal defect, while to remove murder cases from the cognizance of juries would be almost as unpopular as the abolition of the system. I am therefore inclined to recommend that trial by jury should cease in this district until circumstances become more favourable.

15. It is, however, ungracious to recall concessions, and if for reasons of policy the suspension of trial by jury does not appear desirable, I respectfully recommend that all Sessions cases should be tried by jury, except offences punishable with death. The public would thus enjoy an extension in one direction of the system they value, while its curtailment in a single class of cases would affect a very limited number of persons and could be reasonably justified as the logical consequence of the reluctance of Hindus, and especially of Guzarathi Hindus, to cause the death of a fellow-creature.

No. 27. From W. H. CROWE, ESQ., Sessions Judge of Poona, to the Registrar, Her Majesty's High Court of Judicature, Bombay,—No. 106, dated the 15th March 1890.

In reply to your letter No. 480 of the 4th instant, I have the honour to state that my experience of the working of the system of trial by jury is confined to the Poona District where it is of long standing, having been introduced on the 1st January 1867.

2. I find that during the various periods when I have acted as Sessions Judge of Poona, I have tried 33 cases of murder, culpable homicide not amounting to murder, and attempts to commit murder. In 17 cases, or 51·5 per cent., convictions were obtained. The number of accused persons was 52, of whom 24, or 47 per cent., were convicted. This percentage is considerably higher than that arrived at by Mr. Heaton, after taking out the returns for the whole period during which the jury system has been in force and for each and all of the districts to which it has been applied. Looking at the results on the whole, and the fact that the results are not far below those obtained in England according to the *data* furnished in Mr. Heaton's memorandum, I do not think that any change is called for. The intelligence of the average jurymen in the Poona District is of course higher than that met with in the outlying portions of the Presidency, and I have often the advantage of the services of pensioned Magistrates who have had experience themselves in administering the law. A perverse Jury is sometimes met with, but a corrupt one, as far as I have had an opportunity of judging, never. There is possibly, taking the jurymen as a whole, a lack of moral courage when serious cases such as murder and cognate offences are under trial, but though the verdict given by the jury is not always that which the Superintendent of Police, Magistrate or even the Sessions Judge expected, I do not think it follows that the jury are necessarily wrong. According to my experience the Police are more often to blame than not for a failure of justice. It is the introduction of that little bit of made-up evidence which throws discredit on the whole case.

3. On the whole, however, and looking at the results of my own experience in Poona, I do not recommend that any change be introduced.

No. 28. From G. C. WITHWORTH, ESQ., Sessions Judge, Thana, to the Registrar, Her Majesty's High Court of Judicature, Bombay,—No. 654, dated the 18th March 1890.

With reference to your letter No. 479 of the 4th instant, I have the honour to observe that, as the system of trial by jury is not in vogue either in Kathiawar or in the District of Ratnagiri, my experience of it is very limited. It is confined indeed to three very short periods of service in the Districts of Poona, Surat and Thana.

2. So far as this limited experience enables me to speak at all, I am of opinion that the system has worked as well as the authorities which introduced it could expect. The statistical results indicated in the Under Secretary's note are not, I think, surprising. It was a matter of course that the percentage of convictions under the jury system would diminish. And this for two reasons. First, that the jurors being less accustomed than the Judge to estimate the value of evidence would be often in doubt what conclusion to arrive at, and every doubt naturally tends in favour of the accused. And secondly, the jurors, being accustomed not to regard crime from a public point of view, but being only called upon very occasionally to determine a particular case, are more liable than a Judge to be influenced by considerations of the effect of their verdict upon the individual fellow-citizen they are called upon to try.

3. For these reasons I think it was to be expected that juries would often acquit where a Judge would convict; and my experience, so far as it goes, is in accordance with that expectation. But the difference of conclusion does not extend in my experience to what would be called very clear cases. I have not met with any instances in which a jury has returned a verdict either wilfully wrong or indicating an absolute inability to appreciate the evidence set before them.

No. 29. From DR. A. D. POLLEN, Sessions Judge, Belgaum, to the Registrar, High Court, Bombay,—No. 699, dated the 17th April 1890.

With reference to your letter No. 481 of the 4th ultimo, I have the honour to state that my opinion upon the working of the system of trial by jury in the Belgaum District was somewhat fully expressed in the Administration Report for the year 1888, which I submitted on the 20th April last.

For the sake of ready reference I beg to quote the following extract, and I may add that my views upon the subject have undergone no change or modification, but, on the contrary, have been confirmed by an additional year's experience:—

"Trial by jury was introduced into this district in 1885. The number of jurors on the panel for the year under report was 108, but as many of these were constantly absent from

Belgaum, considerable inconvenience was experienced at times during the year in consequence of the small number of jurors available. Towards the close of the year I took steps to enlarge the panel, and now the number of jurors stands at 177, but I am not certain that so many persons really possess all the necessary qualifications. The differences of languages increase the difficulties of getting together a satisfactory jury. I have had sometimes to be satisfied with a jury composed of individuals not one of whom spoke or understood the same vernacular language, and only some of them knew a little English. In this part of the country among the respectable classes from whom the jury panel is selected are to be found persons who know Kanarese only, or Marathi only, or one of the Madras vernaculars only, or only English, or only Portuguese or Konkani; and as witnesses are examined sometimes in Marathi and sometimes in Kanarese, it is no easy matter to empanel a satisfactory jury. In 1887, my predecessor, Mr. Fulton, reported against the jury system, but it was decided to give it a further trial. Last year I reported that, though from the short experience I had had, I was not prepared to endorse to their full extent my predecessor's views as regards the general failure of the system. I agreed with him in thinking, that in murder cases it was not to be relied on. My opinion on this point has been confirmed by the experience of the last year. Though I occasionally meet with an intelligent, independent, and honest set of jurors, I am satisfied that dependence cannot ordinarily be placed on an average jury chosen, as the law requires, by lot from the general list, to return an honest or conscientious verdict in the case of offences punishable with death. I find that in such cases the average jury is wanting in moral courage, in independence and in ability to appreciate evidence so as to discriminate between what is true and what is false. The unanimity and rapidity with which the juries, as a rule, arrive at their verdicts have struck me with surprise. They seldom, if ever, disagree, a fact which indicates want of courage and of a sense of individual responsibility; and they do not seem to be much influenced by the Judge's charge. The Return (Form No. 11) shows a great disproportion between the numbers of acquittals and convictions in the case of offences affecting human life. I do not think that the provisions of section 307, Criminal Procedure Code, afford an adequate security against improper verdicts. The High Courts will not interfere with the verdict of a jury, unless it is shown to be palpably and manifestly wrong; and in the majority of cases, where so much depends on the right appreciation of oral evidence, it is not easy to show this, for it seldom happens that some weak points cannot be discovered in the evidence of native witnesses in murder cases, and these can be easily pointed out as justifying a jury's reluctance to convict. I think that a trained and experienced Judge is better qualified to appreciate the evidence and to discriminate between truth and falsehood in such cases, than a jury selected by lot from a panel of jurymen such as are available in this district. I am therefore disposed to advocate that offences punishable with death should be excepted from the category of offences triable by jury in the mofussil. At the same time I must point out that not a few failures of justice in important criminal cases result from the way in which such cases are sent up by the police and enquired into by Magistrates. I observe that in this district nearly all the serious cases of crime are enquired into by native Magistrates, many of whom have a most imperfect conception of the rules of evidence, and who for the most part content themselves with recording sufficient evidence to establish a *primâ facie* case, without endeavouring to scrutinize and sift the evidence or to ascertain what the witnesses really know and testing their means of knowledge. The police, too, cannot be made to understand that it is better to send up a seemingly imperfect case with true evidence than a case apparently complete at all points supported by false or doubtful evidence. I have seen not a few cases in which the indirect and circumstantial evidence alone would have almost sufficed for a conviction, utterly spoiled by the introduction of direct evidence, which it was manifestly impossible to believe. The lower grades of police officers seem to think that it is incumbent on them to send up a case against persons suspected of serious crime and to regard the question whether the evidence which they send up is true or false as quite a secondary consideration. This tendency is, I am afraid, at the root of many of the failures of justice which unquestionably occur. The juries are, as a rule, quick to detect the police witnesses, and they are naturally induced in consequence to view all the other evidence with distrust, and they thus overlook much that tends indirectly to establish the guilt of the accused. I have called the attention of Magistrates and senior police officers to these points, and I hope for some improvement in the future. In murder cases, when an accused person is willing to make a statement before a Magistrate, he ought to be sent at once to a Magistrate of the first class, whose duty it should then be to ascertain, if possible, whether the confession is true, and voluntary. The present practice of taking accused persons to the nearest "Aval Karkun," instead of aiding the course of justice, not unfrequently defeats it, and leads to the fabrication of false evidence intended to corroborate details of a confession."

In my Administration Report for the previous year, 1887, I had written as follows :—" On one point, however, my mind has long been made up, namely, that offences punishable with death should be omitted from the list of offences triable by jury. My experience in this and other districts has taught me that it is well nigh impossible to depend upon getting an honest or reliable verdict or opinion from jurors or assessors in murder cases. I prefer the Madras system, which assigns the minor offences to be tried by juries and leaves the more serious crimes to be dealt with by the Judge aided by assessors."

There have been 47 trials for murder since the introduction of the jury system in this district in 1885. In 23 cases a verdict of not guilty was returned; in 15 cases verdict of guilty was returned; in 3 cases the accused pleaded guilty, and in 6 cases the accused persons were found guilty on minor charges, though acquitted of murder. In 5 cases of acquittal the Sessions Judge refused to accept the verdict of the jury and referred the matter to the High Court, which set aside the verdict in two instances and declined to interfere in the remaining three. In several other cases of acquittal the Judge disapproved of the verdict, but considered it useless to refer the matter, having regard to the principles laid down by the High Court in disposing of such references.

5. The result of my experience of the jury system during the last three years is that I have no confidence in Belgaum juries. I never feel certain of being able to empanel a jury that will return an honest and impartial verdict in a trial for murder. I sometimes have a good jury who are capable of appreciating evidence and returning a conscientious verdict; but I have also had experience of juries who do not scruple to return a perverse verdict. Many Hindu jurors are conscientiously averse to capital punishment, and nothing would induce them to consent to a verdict that might entail a sentence of death. Many jurors are swayed by an unreasoning prejudice against the police. Many again are open to outside influences. Wealthy or high-placed culprits are unduly favoured by the jury system.

6. The result is not so bad in the trial of offences not punishable with death, and especially offences against property. There have been 82 jury trials in this district for non-capital offences, and the number of absolute acquittals has been 32 only, whereas in 57 trials with assessors during the same period there have been 28 acquittals.

7. My opinion is that if the jury system is to be retained in this district, some modifications are absolutely necessary. Looking at the introduction of the system as a step in the political education of the people, I think that we have commenced at the wrong end. Let minor offences be left in the first instance to be tried by jury, and let their powers be gradually enlarged if the system is found to work successfully. At any rate, I again recommend that offences punishable with death should cease to be tried by jury in this district.

No. 30. From C. H. Jopp, Esq., Acting Registrar, High Court, Bombay, Appellate Side, to the Secretary to the Government of Bombay, Judicial Department,—No. 2005, dated the 26th September 1890.

With reference to my No. 2003 of to-day's date I have the honour to forward a copy of a further minute recorded by the Honourable Mr. Justice Candy, with reference to a paragraph in the Report of the Inspector General of Police for 1888.

No. 31. *Supplementary Minute recorded by the Honourable Mr. Justice Candy in connection with papers relating to Trial by Jury in the Bombay Presidency.*

In Mr. Under Secretary Heaton's Note (sent to us by Government) on the trial of murder cases by juries, great stress is laid on the following extract from the Police Administration Report for 1888 relating to Poona : " In one of the cases committed to the Sessions, the Superintendent states that the prisoners had confessed and there was strong evidence against them, but just at the last moment, when the Judge was proceeding to sum up, the accused chose to say that they had confessed because the police ill-treated them, an assertion for which there appears to have been no grounds whatever. The result was an acquittal, and men, who to Colonel Babington's mind were undoubtedly guilty of dacoity accompanied by culpable homicide, were allowed to return scatheless to their villages. The increasing difficulty in obtaining conviction in murder cases must tend to reduce the deterrent effect of the police."

2. The present Officiating Inspector General of Police has favoured me with the extract from the Report of the District Superintendent of Police of which the above is supposed to be a summary. It is as follows :—

" For a considerable time no clue could be obtained ; at length, however, in the month of May, some of the property was discovered, and that and other evidence led to the arrest of 11 prisoners, of whom 3 confessed their guilt before the Magistrate, although, as usual,

they withdrew before the Sessions Court. The evidence in addition to these confessions was fairly strong, and there appeared to be every reason to hope for a conviction; but just as the Judge was proceeding to sum up, one or two of the prisoners chose to say that they had been ill-treated by the police and made to confess, and simply on their *ipse dixit* the minds of Judge and jury appeared suddenly to turn completely round, with the result that one and all were acquitted. I say on their *ipse dixit*, because not one tittle of evidence was brought forward or even asked for in corroboration or otherwise of their statement, except the fact that, on their being taken to Yerrowda Jail, they had made a somewhat similar statement to the Superintendent, and had shown him a few marks which, as the alleged ill-treatment, if it ever took place at all, must have occurrred some six weeks before, were so old that it was quite impossible to tell exactly what they had been caused by. They might of course, as Dr. Salaman explained, have been due to the cause assigned, but they did not look much like it. No explanation was even offered of the fact that when I had seen the prisoners at Khed shortly after their confessions had been recorded, and when the marks if genuine, must have been fresh, they had said nothing at all to me of the ill-treatment, and also that they had made no complaint to the committing Magistrate. After the verdict was given, the Judge (Mr. Candy) saw, I think, himself that there had been a miscarriage of justice, for he suggested that we should appeal. The verdict, however, having been given by a jury, there was of course no appeal open as to the facts, and the District Magistrate and I, after consultation, came to the conclusion that it was not worth while to attempt to prove misdirection on the part of the Judge, and that, therefore, we must allow the matter to stand, and men who, to my mind were undoubtedly guilty of dacoity accompanied with culpable homicide, were allowed to return scatheless to their villages."

3. It will be noticed that the summary is not accurate. The Superintendent of Police had stated that three of the eleven prisoners had confessed their guilt before the Magistrate, not all the prisoners as suggested in the summary. Again, the Superintendent said, "the evidence in addition to these confessions was fairly strong." This is given in the summary as "there was strong evidence against them." Again, according to the summary, there were apparently no grounds whatever for the assertion that the accused had been ill-treated by the police, whereas in the report of the Superintendent it is admitted that there were some grounds.

4. But the serious point for consideration is that in some important particulars the report and the summary are not in accordance with the facts of the case as shown by the record. It is a serious matter that Government should be led to rely on statements of this nature.

5. The facts are these:

The case against the accused depended upon—

(*a*) Alleged identification of certain of them by some of the villagers.

(*b*) Confession of accused No. 8. to the Mahalkari (3rd class Magistrate) of Ghode.

(*c*) Confessions of accused Nos. 4, 5, 6, and 11, to the Mamledar of Khed (2nd class Magistrate).

(*d*) Identification of certain ornaments found in the possession of one Bala, who was evidently a well-known receiver of stolen goods. He said he had got them from accused No. 1.

(*e*) Identification of a blanket found with one of the accused.

6. The jury found on all these points directly against the prosecution, and certainly I was unable to express disagreement with their finding. Colonel Babington was mistaken if he was under the impression that I thought there had been a miscarriage of justice otherwise than by the mismanagement of the case by the police. Some time after the trial we discussed the case and I told him if he was dissatisfied his only remedy was to appeal. There is no doubt that the finding was warranted by the evidence, and if men guilty of dacoity with murder were acquitted, the police have only themselves to blame.

7. Apart from the confessions, the evidence was weak. As to the confessions, it is incorrect to say that the accused chose to say that they had confessed because the police ill-treated them, an assertion for which there were no grounds whatever, and simply on the *ipse dixit* of the accused the Judge and jury appeared suddenly to turn completely round.

8. As to the confession of No. 8 to the 3rd class Magistrate, it *was admitted* that it was legally induced. Directly this accused was brought before another Magistrate, he retracted his confession, and declared that he had been ill-treated by the police.

9. As to the confessions of Nos. 4, 5, 6, and 11, it must be noted that these accused were brought by the police who arrested them, and were getting up the case, to the 2nd class

Magistrate, *who was the committing Magistrate*, that they *remained in the custody of these police* till they were lodged in the Yerrowda Jail (21st June 1888), and that directly they were free from the custody of these police, they asserted that they had been ill-treated by the police, and that the Superintendent of the Jail (Dr. Salaman), who then and there examined them, deposed—"*I think it very possible that the prisoners may have been beaten by the police*," and he admitted that "if the Circular No. 1841 of 1st June 1887 had not escaped his notice, he would certainly have brought the present case to the notice of the District Magistrate." Of course it was too late in the trial in the Sessions Court to order further enquiry. It was not likely that the police ill-treated the prisoners in the presence of independent witnesses, or that the prisoners, while in the custody of the police, would complain to the "Police Sahib" or to the Native Magistrate. But the men complained *directly* they were out of the custody of the police, and they then showed marks which were "very possibly" of ill-treatment. Their Vakil (who if I remember rightly, was appointed by the Court, the prisoners being without funds, and the case of dacoity with murder) evidently did not know of their complaints which had been recorded in the Jail register, for he said that he did not wish his clients examined beyond their plea of not guilty. But it was when one of the prisoners insisted that there had been ill-treatment by the police that the Session Judge summoned Dr. Salaman.

10. In the face of the above facts, I think it is a matter of regret that paragraph 6 on page 60 of the Police Administration Report was allowed to appear, and that it should have formed one of the foundations for an attack against trial by jury.

No. 32. From E. HOSKING, Esq., Judge and Sessions Judge of Karachi, to the Secretary to the Government of Bombay, Judicial Department,—No. 1017, dated the 19th August 1890.

I have the honour to submit the following report called for by Government Resolution in the Judicial Department, No. 3783 of the 15th July 1890.

2. I have had experience of trial by jury in two districts. From the middle of December 1887 to the middle of May 1889, that is during 17 months, I was Sessions Judge of Thana, and since May 1889 to the present date, that is, during 15 months, I have been Sessions Judge of Karachi.

3. In the Thana District there were 187 jurors, of whom 125 were Hindus, 33 Native Christians, 18 European or Eurasians, 9 Parsees, and 2 Muhammadans.

4. In the Karachi District there are 508 jurors, consisting of 221 Europeans or Eurasians, 151 Hindus, 105 Parsees, 30 Muhammadans, and 1 Native Christian.

5. Thana District is much more populous than Karachi District, and the Sessions work is much heavier in the Thana District.

6. During the 17 months I was at Thana, 44 cases were tried by jury: 30 of these were trials for causing death, in 19 cases the accused being charged under section 302 of the Indian Penal Code, and in 11 cases the accused being charged under section 304.

7. Of the 19 murder cases, the verdicts of the jury were as follows:—

Guilty of murder	2 cases
Guilty of culpable homicide not amounting to murder	2 "
Guilty of grievous hurt, section 325	4 "
Guilty of grievous hurt, section 326	1 case
Guilty of simple hurt, section 323	1 "
Guilty under section 201	1 "
Not guilty of any offence	8 cases
	19 cases

8. In the 11 cases charged under section 304, the verdicts of the jury were—

Guilty under section 304	1 case.
Guilty under section 325	3 cases
Guilty under section 323	4 "
Not guilty of any offence	3 "
	11 cases.

9. I have spoken of the verdicts of the jury, but as to the minor charges, I took the opinion of the jurors as assessors.

10. Out of the 19 murder cases, I referred 3 cases to the High Court under section 30 of the Criminal Procedure Code.

11. In these 3 cases the verdicts were—

Guilty under section 304 in 1 case.
Guilty under section 325 in 1 "
Guilty under section 323 in 1 "

In the first two of these cases the High Court convicted the accused of murder, and in the third case convicted under section 325.

12. Out of the 11 cases of culpable homicide, I differed from the assessors in 3 cases. In 2 cases they were of opinion that the accused were guilty under section 323, and in 1 case 4 assessors were for acquittal, and in all 3 cases I convicted under section 325.

13. Thus, in 6 cases out of 30 in which death had been caused, I was unable to accept the verdict or opinion of the jury, that is, in 20 per cent. of such cases.

14. In the remaining 14 cases tried by jury (sections 333, 376, 394, 395, 436, 457, 467) I accepted the verdicts of the jury.

15. During the 15 months I have been at Karachi, 30 cases have been tried by jury, including 4 cases of murder and 3 cases of culpable homicide not amounting to murder.

16. In all these cases I have accepted the verdict of the jury, though there was one case of theft in which I did not quite concur in the verdict.

17. The system of trial by jury has been in force in Karachi for six years. The total number of trials by jury has been 125, of which 29 were cases of murder, 4 cases of culpable homicide not amounting to murder, and 6 cases of attempt to commit murder. The verdicts of the jury have been as follows :—

(1) As to 29 murder cases—

13 guilty under section 302.
2 guilty under section 304.
14 not guilty of any offence.
—
29
—

(2) As to 4 cases of culpable homicide—

1 case guilty under section 304.
1 (one) case guilty under section 323.
2 cases not guilty of any offence.
—
4 cases.
—

(3) As to 6 cases of attempt to commit murder—

3 cases guilty under section 307.
2 cases guilty under section 326.
1 case guilty under section 328.
—
6 cases.
—

18. During the six years, the Sessions Judge has only referred one case to the Sadar Court under section 307 of the Criminal Procedure Code; the accused was charged with murder and the jury found him not guilty; the Sadar Court convicted the accused under section 302 of the Indian Penal Code. In this case the jury consisted of 1 European, 3 Parsees, and 1 Muhammadan.

19. In a case of culpable homicide tried in 1885, the Judge (Mr. Forman), while acquitting the accused of any offence, expressed an opinion that he should have been convicted under section 323.

20. In a case of murder tried in 1888, the Judge (Colonel Grant), while acquitting the accused who had been charged with causing the death of her husband by poison, stated that he did not concur with the jury in their verdict.

21. In a case of theft in 1885, the Judge (Mr. Forman) convicted the accused while not altogether agreeing with the verdict.

22. Twenty-eight of the cases tried by jury were for theft, having been committed to the Court of Sessions on account of previous convictions.

7 cases were under section 457.
7 cases under section 376 or 376 and 511.
7 cases under section 328.
5 cases under section 394.
3 cases under each of sections 377, 409, 467.
2 cases under each of sections 240, 395, 380, 454, 392, 366.
1 case under each of sections 211, 232, 235, 326, 333, 363, 408, 382, 392, 420, 436, 459.

23. Colonel Grant in his Annual Report for the year 1885 (No. 665 of the 19th May 1886) expressed the following opinion as to the working of the jury system in Karachi :—

> "The system has worked very well and has given much satisfaction. I am of opinion that trial by jury might be extended to all cases coming before the Sessions Court of Karachi."

24. I agree with Colonel Grant that the jury system has worked well in Karachi. I do not, however, recommend its further extension, because I am of opinion that trial with assessors is much better than trial by jury.

25. Besides his own appreciation of the evidence, the Judge has no means of gauging the value of the verdict of the jury.

26. The Appellate Court is equally in the dark as to the weight which ought to be given to the verdict, except in both cases so far as the Judge happens to be personally acquainted with any of the jurors.

27. In trial with assessors the decision rests with the Judge, who is likely to be able to decide most correctly, and the reasons given by the assessors afford him the means of ascertaining the weight to be given to their opinions. The evidence can again be considered by the Appellate Judge, who can also appreciate the value to be given to the opinions of the assessors. I recommend that in the Thana District cases of homicide and of attempt to commit murder and also cases of hurt should be tried with assessors and not by jury.

No. 33. From G. M. MACPHERSON, Esq., Judicial Commissioner in Sind, to the Secretary to the Government of Bombay, Judicial Department,—No. 1847, dated the 26th August 1890.

I have the honour to forward the report called for in Government Resolution No. 3783 of the 15th ultimo, on the working of the jury system in India.

2. I have myself as Sessions Judge had no experience of this matter. As Judge of the Sadar Court, I have had various appeals before me, in which had I been going into the facts of the cases I should have wished to know the opinion of the jurors in detail on particular points. As, however, the Sessions Judge's charges to the jury were usually not open to objection, there was almost never any occasion for interference. The Sessions Judge of Karachi referred one case in which he held the verdict of the jurors to be decidedly objectionable, and I upset the decision. They seemd to have laid hold of one circumstance, so as to prevent them from attending to the rest of the evidence. Except in the above instance, no acquittal by a jury has come before me.

3. In Karachi the system of trial by jury is under far more favourable circumstances than usually accompany it. Karachi more resembles Bombay in this respect than do Surat and other such places. The population of Karachi includes merchants, both Native and European, who are accustomed to act on probabilities, who are often chosen privately to act as arbitrators and who have broader views than are usually found among the class up-country from which assessors are drawn, or jurors would have to be chosen. The results of Karachi trials are therefore better than probably would be found in up-country stations. But in trying cases referred for confirmation of sentences of death, which cases had been tried here by jury, I have at times wished the judgment had been that of Judge entering into the details of the evidence, and giving his own opinion in full as to various matters. But it is to be remembered that I have not seen the cases in which a jury may have convicted a person of a minor offence rather than of the offence of murder, as there are very few appeals in jury cases. The opinion of the Sessions Judge of Karachi must therefore be of more importance as to facts met with in his experience than mine can be. I may say that I have only seen the best of the results of jüry trial.

4. But I am very decidedly of opinion that trial by jury should not be extended to other districts, and should in some places be restricted. I may, however, add that my own private opinion is altogether against the system of trial by jury anywhere. I place far more trust in the decision of a trained Judge trying an intricate case than in that of 5 or 12 men unaccustomed to weigh evidence. Jurors may be looked on as the best men from the class of assessors. But from what I have seen of assessors, I believe little reliance is often to be placed on them. There are some perverse ideas which often pervade the minds of assessors ; they often think an eye-witnesses necessary, when there is none, and at other times they reject the testimony of eye-witness, simply saying that accused would not have been so foolish as to commit an offence if he knew any one would see him do it. Some assessors are as intelligent as any jurors, even as there are as clever men of business up-country as are to be got in a commercial port like Karachi or Bombay. But assessors' opinions are often based on very inapplicable grounds,

and I do not think it would be safe to extend further the powers of deciding as to matters of fact which are given to a jury. Had the system not been introduced into Karachi, I should not have recommended its adoption even here. It would be out of place for me to give a decided opinion as to its practical working in particular places elsewhere, but the general opinion formed by me from what I know of assessors, who form the class from which jurors must be drawn up-country, prevents me from recommending the extension of the system.

5. Mr. Hosking has sent me a copy of his letter on the subject, which shows that in Karachi more than two-fifths of the jurors are Europeans or Eurasians, while one-fifth consists of Parsis. This does not represent the class of jurors who would usually be found up-country, and I would recommend only slight interference with the classes of cases tried here by jurors. Speaking generally and without reference to any particular place elsewhere, I think cases of offences against life should not be tried by a jury. If the accused is sentenced to death, the whole evidence has to be weighed by the High Court, in which case the detailed opinion of the Sessions Judge would be of use. There is too many jurors or assessors a great temptation to convict of a minor offence instead of the capital one. Even Sessions Judges have (I think) an undue tendency to find that cases come under the exceptions which reduce an offence from murder to simple culpable homicide. In considering some cases in order to decide whether a sentence should be enhanced, it is almost necessary to know the Judge's detailed reasons for finding the offence not to be that of murder. Again, if a Sessions Judge refers many cases in which he differs from the verdict, his jurors come to be little more than assessors. The feeling that jurors are vested with powers not conferred on assessors leads to an unduly high opinion being placed on their opinions, when cases are referred. I therefore think that no cases which might involve the sentence of death (such as cases of homicide and robbery accompanied by death) should be tried by jurors. I do not think that they should be troubled with cases less serious than the lowest which they now try, and I think that cases of theft, etc., which are only punishable with more than three years' imprisonment, because accused is an habitual offender, should not be tried by them. As a large number of jurors have to be called from their various employments to try such petty cases of theft, which are of importance only because accused has already been convicted, I think such cases should be excluded. Also I think that cases of rape and unnatural offences out of Karachi should be excluded. I well recollect trying a case of the last-named offence, in which an assessor, holding a good social position, said accused was innocent because he had only done what all the young people of their families were in the habit of doing. The result is that I would recommend that even in Karachi no cases involving the question whether a capital offence has been committed should be tried by a jury, while, if jurors are continued elsewhere, I would relieve them everywhere from the trouble of trying cases of theft, etc., in which heavy punishment may be inflicted only because the accused is an habitual offender, and I would, except in Karachi, exclude from jurors' cognizance all cases of rape and unnatural offence.

From S. HAMMICK, Esq., C. S., Sessions Judge, Ahmednagar, to the Secretary to the Government of Bombay, Judicial Department,—No. 1791, dated the 28th July 1890. No. 34.

As directed by Government Resolution No. 3783, dated 15th July 1890, I have the honour to submit my opinion on the system of trial by jury in this Presidency.

2. My experience of the system is confined to the Surat District and my opinion is formed on my observation of the working of the system in that district only. Perhaps if I had seen it as it works in Poona or elsewhere my opinion might be modified.

3. In Surat all offences punishable with death or imprisonment of ten years or upwards are tried by a jury of five members. The trial of other offences is conducted by the Judge aided by two or more assessors.

4. As regards the relative advantages and disadvantages of such a system of trial, I am of opinion that a jury so constituted is not more likely to arrive at a true and sound verdict than a Judge sitting with the aid of assessors. The system was introduced in the Surat Court on the 1st March 1885. Between that date and the 14th March 1890, when I had the honour to report on the subject to the Registrar of the High Court, there had been 68 cases tried by juries and 23 cases tried by the Judge aided by assessors. The ratio of persons acquitted to persons convicted was—

In jury cases 68·3 : 31·7.
In assessors' cases 70·7 : 29·3.

These results indicate that on the average an accused person is as likely to be convicted by a jury as he is by a Judge sitting with assessors. The results are nearly identical.

5. But the results of trials held under the jury system on charges of murder are in marked contrast to the above. During the five years dating from 1st March 1885 there were twelve such cases, and every case resulted in an acquittal. In one case tried before me the jury found with my concurrence that the accused was a lunatic. In another case the jury found that the accused was the victim of a homicidal monomania. I did not concur and referred the case to the High Court, which finally acquitted the prisoner. In a third case the Judge directed the jury to acquit on the charge of murder. After deducting these three cases, there remain nine cases, in all of which the jury unanimously returned verdict of acquittal. After making every allowance for an average or even excessive proportion of doubtful cases the conclusion, I think, must still be that as regards cases of murder the system of trial by jury has not been successful.

6. The result of five years' experience in Surat seems to be that (1) the general results of trials by juries and of trials by the Judges aided by assessors are, if judged by the proportion of convictions to acquittals, almost identical; (2) in cases of murder a jury is unduly reluctant to convict.

7. A circumstance which indicates the weak point in the jury system is the unanimity of their verdicts. The Legislature has provided that, where there is a difference of opinion the opinion of the majority shall prevail. The Legislature, therefore, does not exact an unanimity, which in the nature of things cannot always exist. But in Surat, with the exception of two cases tried in 1885 the verdict of the jury has invariably been unanimous. It appears to me that the same want of moral courage leads the individual juror to resign his own opinion, when he finds that he is in a minority, as causes the jury to shrink from convicting a prisoner on a capital charge. This unanimity of verdict has also the practical effect that it ties the hands of the Judge. He may disagree with the verdict, but unless he can show that it is obviously wrong or perverse, a reference to the High Court is ineffectual in the face of an unanimous jury.

8. I have also observed that in a jury of only five members any one member who occupies a superior position to the rest, or who is self-asserting, is apt to lead all the rest. Individual influence is more likely to preponderate in a jury of five than in a jury of twelve members, and I have sometimes had reason to believe that the case was being tried not by the jury, but by one member of the jury, and as no one outside the jury knows how each individual votes there is no personal responsibility.

9. In the case of trials held with the aid of assessors on the other hand, each assessor has to give his opinion in open Court and to state the grounds on which he holds it. He is therefore subjected to a certain stimulus to give a reason able opinion. At the same time, as the final decision rests with the Judge, the assessor escapes the unpleasantness of having to pronounce the verdict of guilty. My experience is that assessors are a most valuable aid to a Judge, and if, as occasionally, but not often, happens, an assessor delivers an irrational opinion, its value is immediately determined by the reasons on which he supports it, and the opinion is not allowed to interfere with the decision of the case.

10. Trial by jury is, I believe, decidedly popular among the English-speaking community. It is regarded as a free institution, and it gives a certain status to persons who are on the jurors' list. Its abolition would be regarded with disfavour as a retrograde step. Where it has been introduced it should therefore, in my opinion, be maintained, but not under the present conditions.

11. I am not aware why, when the system was introduced, it was at once applied to cases of the gravest character, involving the sentence of death and transportation, which most severely tax the qualities of the juror. I respectfully suggest that the beginning should have been made at the bottom of the ladder. I should therefore recommend that, where the system has already been introduced, it should be made applicable to all Sessions cases, except cases of murder, and also such cases as the Local Government shall, on the report of the District Magistrate, direct to be tried by the Judge with the aid of assessors. This provision would, I think, meet the case of offences against the State, or against religion or any cases which, owing to exceptional circumstances, might be found to be unsuited for a trial by jury. I should also recommend that the system should not be further extended except to districts in which there is a large English-speaking community from which to draw the jurors.

12. I think that possibly a change in the procedure adopted in trials by jury might have the effect of making the jurors more self-reliant and of enabling the Judge to gauge their real opinions. At present the custom is for the jury to retire to consider their verdict. When they return to Court the foreman informs the Judge what is their verdict, and he always adds that the jury are unanimous. Apparently, the Judge has no power to enquire what was the opinion of each individual juror, nor the grounds on which the verdict is arrived at. The

jurors are independent, and if the foreman or any other prominent member can impose his will upon his colleagues, he practically becomes the Judge of the case. Instead of this procedure I would suggest for consideration whether it would not be better to prohibit jurors from retiring and settling their verdict in private. Each juror should be required to write his decision in his place in Court on a slip of paper, which should be handed to the Judge, who would thus gather what is the verdict of them all. The Judge should be bound to regard the opinions as confidential, and the slips might be sealed up until the expiration of the time for appeal, and then destroyed. I think that in this way the advantages of the jury system would be retained, the minorities of juries would no longer be afraid to let their opinions be known, and the Judge's hands would be strengthened if he knew that a verdict with which he disagreed was the verdict, not of the unanimous jury, but possibly of only a small majority.

13. I much regret that urgent criminal work should have delayed the submission of this report.

From C. G. W. Macpherson, Esq., C.I.E., Sessions Judge, Surat, to the Secretary to the Government of Bombay, Judicial Department,—No. 1220, dated the 14th August 1890. No. 35.

With reference to Government Resolution, Judicial Department, No. 3783 of 15th July 1890, I have the honour to enclose a letter on the jury system written by my predecessor, Mr. Hammick, to the High Court on 14th March 1890, and to report that I myself never served as Sessions Judge in a district in which the jury system is in force, until I was posted to Surat.

2. Here my experience has been limited to four cases, and while I have been greatly struck by the intelligence displayed by the jury and by the attention they give to the case, I also could not help noticing in one case a certain timidity as regards convicting on a serious charge.

3. I enclose a statement showing the result of all cases tried by juries in this district since the institution of the system in March 1885, and a reference to it will show that 13 cases of murder and attempt to murder (11 murders and 2 attempts) have been so tried and in 8 cases the accused were found not guilty, in 4 cases they were found guilty only of culpable homicide not amounting to murder, and in 1 case it was found that, though accused committed the act, he was of unsound mind at the time.

4. There were 12 cases of culpable homicide not amounting to murder, and in 4 cases the accused were found not guilty, in 7 cases they were found guilty only of some variety of hurt, and in 1 case it was found that, though accused committed the act, he was of unsound mind at the time.

5. It appears, therefore, that in the 25 cases in which human life had been taken or attempted, the accused were either found not guilty or were found guilty of some crime less serious than that charged, or were found to have been of unsound mind.

6. There were 7 cases of mischief by fire and 1 case of attempt at mischief by fire, and in 7 of these cases the accused were found not guilty, while in 1 the accused was found guilty of an attempt to commit mischief by fire.

7. There were 8 cases of dacoity, and in 5 cases the accused were found not guilty, in 2 cases they were found guilty, and in 1 case they were found guilty only of robbery.

8. There were 3 cases of rape or attempt to commit rape, and in all of them the accused were acquitted.

9. There were 22 other cases punishable with transportation for life, and in 7 cases the accused were found not guilty of the offence charged, and in 15 cases they were found guilty.

10. In the remaining 7 cases tried with a jury the accused were found not guilty in 3 cases and guilty in 4 cases.

11. An examination of these returns and my own very slight actual experience in the matter, lead me to suggest that murder, culpable homicide not amounting to murder, mischief by fire, and dacoity should be excluded (as well as attempts at the same offences) from the cases triable by a jury in this district. The statistics of results which I have quoted are, I think, fatal to the claims of the system to be a success so far as murders, culpable homicides and mischief by fire, are concerned, and the cases have been sufficiently numerous to render a generalization tolerably safe. As regards dacoity, the figures do not indicate that the system has been a failure, but I suspect it would prove so were there to be an outbreak or organized dacoity due to failure of crops, the oppression of money-lenders, or other causes. Government are aware what a very serious aspect this crime sometimes assumes, and it might have a

very bad effect if dacoits captured with much difficulty and really proved guilty were allowed to escape owing to the timidity of a jury.

12. To the offences I have named, offences under chapters VI, VII and VIII of the Penal Code and the offence of being a thug may be added.

13. On the other hand I would suggest that Sessions cases punishable with imprisonment for less than ten years, which are now tried by the Judge with the aid of assessors, be in future tried by the Judge with the assistance of a jury. The number of these cases since March 1885 has been 23.

14. The class of cases which I propose to remove from the cognizance of a jury average about 8 per annum, and those I propose to substitute average about 4 per annum and are naturally shorter cases than the others, so that if the cases triable by jury were thus reduced, it would be practicable to raise the number of jurymen from 5 to 7—a matter of considerable importance in my opinion, as with 5 only the feeling of personal responsibility is, I fancy, greater than is desirable.

Statement showing the result of cases tried by the Jury in Surat District from March 1885 to August 1890.

Consecutive No.	Offence charged.	Verdict of Jury.	Whether unanimous or not.		Whether Judge agreed or not.		Remarks.
			Unanimous.	Not unanimous.	Agreed.	Not agreed.	
			Cases of murder.				
1	Murder, section 302; added afterwards culpable homicide, section 304.	Guilty of culpable homicide not amounting to murder, section 304.	Unanimous .	...	Agreed .	...	The Judge directed the jury to acquit the accused on the charge of murder.
2	Murder, section 302	Not guilty	...	Not unanimous .	Ditto .	...	The verdict was of the majority and the Judge agreed with the majority.
3	Ditto, do. 302 . . .	Ditto	Unanimous .	...	Ditto .	...	The Judge thinks that had the decision rested in his hands the result would have been different.
4	Murder, section 302, sections 324 and 326	Guilty of culpable homicide, section 304, and other offences.	Ditto .	...	Ditto .	...	
5	Ditto, do. 302	Not guilty of murder, but guilty of culpable homicide, section 304.	Ditto .	...	Ditto .	...	
6	Ditto, do. 302	Not guilty	Ditto .	...	Ditto .	...	
7	Ditto, do. 302	Ditto	Ditto .	...	Ditto .	...	
8	Ditto, do. 302	Ditto	Ditto .	...	...	Not agreed .	Referred to the High Court. The High Court agreed with the verdict of the jury, and accused was sent to a Lunatic Asylum.
9	Ditto, do. 302	Not guilty of murder, but guilty of homicide.	Ditto .	...	Agreed .	...	
10	Ditto, do. 302	Not guilty	Ditto .	...	Ditto .	...	

Statement showing the results of cases tried by Jury in the Surat District from March 1885 to August 1890 – contd.

Consecutive No.	Offence charged.	Verdict of Jury.	Whether unanimous or not.		Whether Judge agreed or not.		Remarks.
			Unanimous.	Not unanimous.	Agreed.	Not agreed.	
			Cases of Murder—contd.				
11	Murder, section 302	Committed the act but by reason of unsoundness of mind was incapable of knowing the nature of the act.	Unanimous .	...	Agreed .	...	Reported to the Government to be sent to a Lunatic Asylum.
			Cases of attempt to murder.				
1	Attempt to murder, section 307 . .	Not guilty	Unanimous .	...	Agreed .	...	
2	Ditto, do. 307 . .	Ditto	Ditto .	...	Ditto .	...	
			Cases of Culpable Homicide not amounting to Murder.				
1	Culpable homicide, section 304, and rape, Section 376.	Not guilty	Unanimous .	...	Agreed .	...	
2	Culpable homicide, section 304 . .	Ditto	Ditto .	...	Ditto .	...	
3	Ditto, do. 304 . .	Not guilty of culpable homicide, section 304, but guilty of simple hurt, section 323.	Ditto .	...	Ditto .	...	
4	Culpable homicide, section 304 . .	Not guilty	Ditto .	...	Ditto .	...	The Judge does not agree with the verdict of the jury, but having regard to the authorities cited beneath section 309, Criminal Procedure Code, he considers that the case is not one which should be submitted to the High Court; he therefore does not express disagreement, and gives judgment in accordance with the unanimous verdict of the jury.

5	Culpable homicide, section 304 . . .	Not guilty of culpable homicide, but guilty of causing grievous hurt, section 325.	Unanimous .	...	Agreed .	...	
6	Ditto, do. 304; charge added by this Court, section 302.	No. 1 guilty of voluntarily causing grievous hurt, section 325, and the others not guilty.	Ditto .	...	Ditto .	...	
7	Culpable homicide, section 304 . . .	Not guilty under section 304, but guilty under section 323.	Unanimous .	...	Agreed .	...	
8	Ditto, do. 304; charge added by this Court of voluntarily causing hurt with a cutting instrument, section 324.	Not guilty of culpable homicide, but guilty of voluntarily causing hurt with a cutting instrument, section 324.	Ditto .	...	Ditto .	...	
9	Culpable homicide, section 304 . . .	Not guilty	...	Not unanimous .	Agreed with the majority.	...	Four jurors agreed and one differed.
10	Ditto, do. 304; charge added, section 323.	Not guilty of culpable homicide, but guilty of voluntarily causing hurt, section 323.	Unanimous .	...	Agreed . .	...	
11	Culpable homicide, section 304 . . .	Committed the act but incapable by reason of unsoundness of mind of knowing the nature of the act.	Ditto .	...	Ditto .	...	Reported to Government to be sent to a Lunatic Asylum.
12	Ditto, do. 304 . . .	Not guilty of culpable homicide but guilty of voluntarily causing hurt by means of a dangerous weapon, section 324.	Ditto .	...	Ditto .	...	
		Cases of Mischief by Fire.					
1	Mischief by fire, section 436 . . .	Not guilty	Unanimous .	...	...	Not agreed .	Reported to the High Court, which agreed with the verdict of jury.
2	Ditto, do. 436 . . .	Ditto	Ditto .	...	Agreed .	...	
3	Ditto, do. 436 . . .	Ditto	Ditto .	...	Ditto .	...	
4	Ditto, do. 436 . . .	Guilty of attempt to commit mischief by fire, sections 436, 511.	Ditto .	...	Ditto .	...	
5	Ditto, do. 436 . . .	Not guilty	Ditto .	...	Ditto .	...	

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Statement showing the results of cases tried by Jury in the Surat District from March 1885 to August 1890—concld.

Consecutive No.	Offence charged.	Verdict of Jury.	Whether unanimous or not.		Whether Judge agreed or not.		Remarks.
			Unanimous.	Not unanimous.	Agreed.	Not agreed.	
		Cases of Mischief by Fire—contd.					
6	Mischief by fire, section 436	Not guilty	Unanimous	...	Agreed	...	
7	Ditto, do. 436	Ditto	Ditto	...	Ditto	...	
8	Attempt to commit mischief by fire, sections 436, 511.	Ditto	Ditto	...	Ditto	...	
		Cases of Dacoity.					
1	Dacoity, section 395	Not guilty	Unanimous	...	Agreed	...	
2	Do., do. 395	Ditto	Ditto	...	Ditto	...	
3	Do., do. 395	One accused is guilty	Ditto	...	Ditto	...	The other three accused pleaded guilty.
4	Do., do. 395	Not guilty	Ditto	...	Ditto	...	No. 1 pleaded guilty.
5	Do., do. 395	Ditto of dacoity, but Nos. 2 to 5 guilty of robbery.	Ditto	...	Ditto	...	
6	Do., do. 395	Guilty	Ditto	...	Ditto	...	
7	Do., do. 395	Not guilty	Ditto	...	Ditto	...	
8	Do., do. 395	Ditto	Ditto	...	Ditto	...	
		Cases of Rape.					
1	Rape, section 37	Not guilty	...	Not unanimous	Agreed	...	The verdict of four was for acquittal and of one for conviction, and the Judge agreed with the majority.
2	Do, do. 376	Ditto	Unanimous	...		...	

		Cases of attempt to commit Rape.				
1	Attempt to commit rape, sections 511, 376	Not guilty	Unanimous	...	Agreed	...
		Other cases in which the offences charged were punishable with transportation for life.				
1	Extortion, etc., sections 386, 467	Not guilty	Unanimous	...	Agreed	...
2	Breach of trust by a public servant, section 409.	Guilty	Ditto	...	Ditto	...
3	Forging a document purporting to be a valuable security, section 467.	Ditto	Ditto	...	Ditto	...
4	Forging a document purporting to be a valuable security, section 467.	Not guilty	Ditto	...	Ditto	...
5	Attempt of causing grievious hurt while committing house-breaking, section 459.	Ditto	Ditto	...	Ditto	...
6	Forging a valuable security, section 467	Guilty	Ditto	...	Ditto	...
7	Ditto, ditto, do. 467	Not guilty	Ditto	...	Ditto	...
8	Attempt to murder, section 307, altered to voluntarily causing hurt with an instrument for cutting, section 324.	Guilty	Ditto	...	Ditto	...
9	Theft in a dwelling-house and theft, sections 379, 380, 75.	Ditto	Ditto	...	Ditto	...
10	Retaining stolen property, sections 411, 475	Ditto	Ditto	...	Ditto	...
11	Lurking house-trespass and theft, sections 457, 380, 75.	Ditto	Ditto	...	Ditto	...
12	House-breaking and theft, sections 457, 380, 75.	Ditto	Ditto	...	Ditto	...
13	House-breaking and theft, sections 457, 380, 75.	Ditto	Ditto	...	Ditto	...
14	Theft, sections 380, 75	Ditto	Ditto	...	Ditto	...
15	Ditto 380, 75	Ditto	Ditto	...	Ditto	...
16	Ditto 380, 75	Ditto	Ditto	...	Ditto	...

Statement showing the result of cases tried by Jury in the Surat District from March 1885 to August 1890—concld.

Consecutive No.	Offence charged.	Verdict of Jury.	Whether unanimous or not.		Whether Judge agreed or not.		Remarks.
			Unanimous.	Not unanimous.	Agreed.	Not agreed.	
	Other cases in which the offences charged were punishable with transportation for life—concld.						
17	House-breaking and theft, sections 457, 380, 75.	No. 1 guilty; No. 2 not guilty	Unanimous	...	Agreed	...	
18	Theft, sections 379, 75	No. 1 guilty; No. 2 not guilty	Ditto	...	Ditto	...	
19	Criminal breach of trust, sections 406, 75	Not guilty	Ditto	...	Ditto	...	
20	Making a false statement, section 195	Ditto	Ditto	...	Ditto	...	
21	Cheating, sections 420, 75	Ditto	Ditto	...	Ditto	...	
22	Retaining stolen property, sections 411, 75	Guilty	Ditto	...	Ditto	...	
	Other cases tried by Jury.						
1	House-breaking by night and theft, sections 457 and 380.	One is guilty and the others are not guilty.	Unanimous	...	Agreed	...	
2	Kidnapping, theft and hurt, sections 366, 380, 323.	Guilty	Ditto	...	Ditto	...	
3	Voluntarily causing hurt, etc., section 333	Not guilty	Ditto	...	Ditto	...	
4	Section 45, Railway Act, 4 of 1879	Ditto	Ditto	...	Ditto	...	
5	Kidnapping, section 366	Ditto	Ditto	...	Ditto	...	
6	House-breaking and theft, sections 457, 380.	Guilty	Ditto	...	Ditto	...	
7	Theft, section 382, altered to robbery, section 394.	Not guilty under section 394, but guilty under section 379.	Ditto	...	Ditto	...	

C. G. W. MACPHERSON,
Sessions Judge.

From W. H. CROWE, Esq., Sessions Judge of Poona, to the Secretary to the Government of Bombay, Judicial Department,—No. 391, dated the 16th August 1890. No. 37.

With reference to Government Resolution No. 3783 of the 15th July 1890, I have the honour to forward herewith a copy of the report submitted by me to the High Court of Judicature at Bombay, on 15th March 1890, on the subject of the working of the system of trial by jury in the Presidency Proper, and on the propriety generally of continuing the jury system in this district with or without modification.

2. The system of trial by jury has its advantages. There is possibly a greater probability that a jury will arrive at the truth in investigating difficult questions of fact than a Judge sitting alone or with the aid of assessors. The class of jurymen are better educated than ordinary assessors. They feel the responsibility devolving on them of arriving at a correct decision and bringing some amount of critical faculty to bear in weighing the evidence. Their verdict also is more likely to command the approval of the general public.

From Dr. A. D. POLLEN, Sessions Judge, Belgaum, to the Secretary to the Government of Bombay, Judicial Department,—No. 1317, dated the 23rd July 1890. No. 38.

With reference to Government Resolution No. 3783 of the 15th instant, I have the honour to enclose a copy of a letter which I addressed to the High Court on the 17th April last, in which I expressed my views upon the jury system so fully that I have now but little to add on the subject.

My report to the High Court deals with both the questions referred to in the Resolution of Government, and it will be seen that I strongly disapprove of the system in the case of all offences punishable with death. I may add that it is also in my opinion quite unsuited to certain other classes of offences, such as offences against the State, riots, murders, and other offences arising out of caste disputes or religious animosities; and also to offences against the marriage laws. In times of political agitation, I fear that the existence of trial by jury might prove to be a distinct danger to the State. In cases where caste feelings and religious sentiments are concerned, the verdict might almost invariably be predicted from the constitution of the jury. On the whole, I am of opinion that trial by jury means the substitution of an inferior tribunal for one more competent in every way to deal firmly, impartially and intelligently with such questions of law and fact as ordinarily arise for adjudication in criminal cases in the Mofussil.

From C. E. G. CRAWFORD, Esq., Sessions Judge of Thana, to the Secretary to the Government of Bombay, Judicial Department,—No. 1499, dated the 19th July 1890. No. 39.

I have the honour to acknowledge receipt of Government Resolution No. 3783, of the 15th instant, on the subject of trial by jury.

2. In reply I beg to state that I have been here so short a time, not yet three months, that not having had any previous experience of the jury system, I do not feel qualified to offer an opinion on the general questions raised.

3. I have, however, tried nine cases with a jury; five of these resulted in convictions, four in acquittals. Out of the total, seven were murder cases, in two of which the accused were convicted of murder, in two of less serious offences against the person, and in three were acquitted. In all of these cases I had not the least hesitation in accepting the jury's verdict, and in not more than two of them had I even the shadow of a doubt as to its correctness.

4. I came here with a strong prepossession against trial by jury in India, which existing before, had been confirmed by reading, as Registrar of the High Court, the reports on trial by jury which were early this year called for by the Honourable the Chief Justice and Judges on a previous reference from Government from the Sessions Judges of other Sessions Divisions where it obtains, my predecessor here having from scanty experience given no opinion. I can only say now that if juries in other Sessions Courts were such as I have sat with here, there could be no question of interfering with trial by them.

From E. M. H. FULTON, Esq., Sessions Judge, Ahmedabad, to the Secretary to the Government of Bombay, Judicial Department,—No. 1038, dated the 22nd September 1890. No. 40.

In reference to Government Resolution No. 3783, of the 15th July, calling for opinions on the working of the jury system in this Presidency, I have the honour to state that I do not think it answers satisfactorily as a method of trying murder cases.

2. I have arrived at this conclusion with reluctance, for since I have been in this district I have had some very good juries and I have always found that they take great trouble and listen patiently to the evidence. The result, however, of the trials is generally uncertain and sometimes very unsatisfactory. I have no doubt that in many instances there is an undue timidity about acting on clear evidence, so that even in the plainest cases there is an absence of certainty about the result which has a very paralyzing effect on the administration of justice. The Judge, it is true, when dissatisfied with the verdict, can refer it to the High Court under section 307, Criminal Procedure Code, but as explained by Mr. Walker in his letter No. 45, of 20th January 1886, and Mr. Aston in his No. 314, of the 19th April last, it is only in very few cases that there is any use doing so.

3. The comparative failure of the system is greatly to be regretted, for it would be far more satisfactory if the trial of murder cases could safely be left in the hands of juries. To the Judge who has the disposal of such cases it undoubtedly is a great relief to be assisted by a jury. Personally I far prefer trying a case with a jury than with assessors. Judges, I am well aware, are liable to mistakes, and in many cases the responsibility of deciding is very serious and painful. If the differences of opinion arising between Judges and juries were confined to those difficult and intricate cases which occur from time to time, I certainly should not consider that any change of system was necessary or desirable. But I have seen many acquittals by juries in murder cases in which I could feel no doubt whatever that the accused persons were proved guilty by clear evidence, and though failures of justice must occur from time to time under any system that can be devised, they happen, I think, more frequently in districts in which the jury system is in force than in others. The number of references annually made to the High Court against verdicts of acquittal is to my mind strong proof that the system has not succeeded. No Judge ever refers a case except when compelled to do so by a strong sense of duty. Some possibly are more prone than others to make such references; but I think all who have to deal with juries have to make them from time to time, and it is impossible to ascribe them to the peculiar prejudices of individual Judges. When juries were first introduced in Ahmedabad, Mr. Walker was highly in favour of them, as appears from the 6th paragraph of his No. 144, of the 17th March 1885; but his views were evidently modified when he wrote his No. 45, of 20th January 1886, which speaks of several references under section 307. Mr. Aston's opinions were expressed in his No. 314, of the 19th April last. Other Judges who have had to deal with mofussil juries will doubtless lay their own experiences before Government.

1885	12
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4. In the Under Secretary's note above mentioned allusion is made to the possibility of the system affording security against wrongful convictions. There can, of course, be no doubt that as the proportion of convictions is diminished the danger of convicting innocent men is reduced, just as it would be wholly removed if there were no convictions at all. To that extent trial by jury is a protection to innocent prisoners. But further than this I cannot see that it is any real safeguard. The danger above alluded to cannot be wholly eliminated from any system whatever. Where popular prejudice was excited against the prisoner, juries, I think, would not be exempt from liability to be carried away by its influence. They have no special insight enabling them to ascertain the facts. This is clear from the frequency of their erroneous acquittals. Circumstances can easily be imagined in which the bias might be in favour of conviction. A strong guarantee against the execution of innocent persons is afforded by the practice of the High Court, which I believe makes it an invariable rule never to confirm a sentence of death in any case in which there is a shadow of a doubt as to the convict's guilt. Greater security than it affords it is difficult to obtain, but I do not think trial by jury really adds much to this security.

5. Under these circumstances I am compelled, not without much hesitation and reluctance, to recommend the abandonment of this method of trial as regards offences punishable with death. Such offences seem to me precisely the class which juries in this country are least qualified to try. Yet in this district they are the only offences triable by jury. It appears to me that it would be better to follow the principle adopted in Madras and the North-Western Provinces and allow juries only to try less serious offences. Possibly, hereafter, with the spread of education, when stronger and larger juries can be secured, it may be proper again to extend their jurisdiction to murder cases, but this should not, I think, be attempted in districts like Ahmedabad and Kaira, where raids and murders are numerous, until either

the country has got more settled, or a change of feeling has occurred regarding the relations of the police to the people. I do not advocate the total abolition of trial by jury, for I think it fosters a sense of responsibility and public duty which it is desirable to encourage, but for the present I think it should be confined to minor offences in which there is no prevailing bias either in favour of conviction or acquittal.

6. It is not necessary for me at present to suggest any list of offences for trial by jury, but I take the opportunity to point out how difficult it is under section 269, Criminal Procedure Code, as it now stands, to frame any satisfactory order on the subject. The amendment of this section in 1886 was apparently effected at the instance of the Madras Government to prevent the possibility of offences punishable with death being tried by jury in that Presidency But I think the plan adopted of making part of a case triable by Judge and part by jury is most inconvenient. In this district I have had several cases in which the accused were charged with both murder and culpable homicide not amounting to murder. In such casos the jury find a verdict on the charge of murder, and, if they acquit, I have on precisely the same evidence to find on the minor charge. In a case tried last May I convicted, under section 304, after the jury had acquitted of murder and then given opinions as assessors by a majority of four to one in favour of total acquittal. The conviction has since been confirmed on appeal. In that instance, no doubt, the peculiar provisions of section 269 enabled me to correct the mistake made by the jury; but a more awkward system it is, I think, difficult to conceive. Either juries should be allowed to try the cases or not. If they are not fit to try minor charges they ought not to be allowed to deal with those of a more serious nature. I therefore respectfully suggest that the Government of India may be moved to amend section 269 by repealing the second paragraph and providing in the first that—" The local Government may by order in the official Gazette direct that all trials or any particular class of trial before any Court of Session shall be by jury in any district and may revoke or alter such order." The difficulty in the present section arises from the use of the word "offences," but can, I think, be got over by the substitution of the word " trials." If the section were amended as I suggest, Government could order that all trials should be by jury in which the accused or any of the accused was charged with any of the offences specified in the notification; and if it was at the same time desired to exclude wholly the possibility of any capital offence being tried by jury, a proviso could be added to that effect distinctly declaring that no trial should be by jury in which any accused was charged with any offence punishable with death, no matter what other offences might be charged at the same trial. This, I think, would be far more satisfactory than the present system under which part of a case is tried by one authority and part by another, with results which must sometimes appear very inexplicable to the parties concerned.

7. I hope that when a new notification is published, chapter VI of the Indian Penal Code will be excluded from the cognizance of juries. That chapter is likely to be used only in times of political trouble in which it would probably be considered wholly unsafe to leave the trials to juries. Offences under chapter VII should, I think, also be excluded. No offences under either of these chapters are triable by jury in the Poona district.

8. I have not thought it necessary to furnish statistics to show the proportion of acquittals and convictions in this district, for I observe that such figures were laid before Government in the Under Secretary's note dated the 17th December. I may state, however, that from what I have seen I consider the juries here are quite as good as those in any district in which I have served. They always appear to me to be most anxious to do their duty conscientiously; but at the same time there is sometimes a hesitation and timidity about their findings which, I think, leads them to erroneous conclusions. Already I have had two cases in which they took, in my opinion, a wholly wrong view of the evidence. In one of these the veridict has since been set aside under section 307, Criminal Procedure Code, and the murderer has been convicted by the High Court, and in the other (to which I have previously referred) I was able to convict myself of culpable homicide. Both were perfectly clear cases.

From Sir JOHN EDGAR, K.C.I.E., C.S.I., Chief Secretary to the Government of Bengal, to the Secretary to the Government of India, Home Department,—No. 122 J.—D., dated the 22nd June 1891. No. 4.

I am directed to acknowledge your letter No. 742, dated the 31st May 1890, asking the Lieutenant-Governor to report how the jury system has worked in the Lower Provinces, what opinion is entertained as to its merits as a means of repression of crime, and what improvements if any, are called for in its application.

2. This Government has consulted the Sessions Judges and the District Officers of the districts in which the system is in force, as well as the Commissioners of the Divisions in which these districts are situated, and the Inspector-General of Police. Copies of the reports received are enclosed.* The Lieutenant-Governor has also considered the seven Minutes of the Judges of the High Court which were forwarded to you with the Registrar's letter No. 540 of the 9th February 1891.

* From Mr. H. F. Matthews, Officiating Sessions Judge of Burdwan, No. 1606, dated the 7th July 1890.
From Mr. F. F. Handley, Sessions Judge of Nadia, No. 477, dated the 19th July 1890.
From Mr. J. Tweedie, Judge of Patna, No. 197 Sct., dated the 21st July 1890.
From Mr. C. B. Garrett, District and Sessions Judge of the 24-Parganas, No. 763, dated the 9th August 1890.
From Mr. J. C. Veasey, Inspector-General of Police, No. 11832, dated the 2nd September 1890.
From Mr. D. Cameron, Officiating Sessions Judge of Dacca, No. 1016, dated the 2nd September 1890.
From Mr. J. Crawfurd, Officiating Sessions Judge of Hooghly, No. 1334, dated the 22nd September 1890.
From Mr. W. Kemble, Officiating Commissioner of Patna, No. 589-G., dated the 24th September 1890.
From Mr. W. H. Page, Sessions Judge of Murshidabad, No. 1291, dated the 25th September 1890.
From Mr. A. Power, Officiating Commissioner of Dacca, No. 1357-J., dated the 7th October 1890.
From Mr. E. V. Westmacott, Officiating Commissioner of the Presidency Division, No. 106 J. G., dated the 16th October 1890.
From Mr. G. Toynbee, Officiating Commissioner of Burdwan, No. 201 T. J.—292 J. G., dated the 31st October 1890.
From Mr. T. D. Beighton, District and Sessions Judge of Dacca, No. 45, dated the 16th January 1891.
From Mr. A. Smith, Commissioner of the Presidency Division, No. 14 J. G., dated the 18th February 1891.

3. It will be seen from the reports and the Minutes of the Judges of the High Court above referred to, that the majority of the most experienced Judges and officers consulted emphatically condemn the system as at present worked in Bengal, and that all are of opinion that it is capable of improvement. The Chief Justice, though unwilling to express any opinion unfavourable to the existence of the system, thinks that an extension of the right of appeal from the verdicts of juries is desirable. Mr. Justice Tottenham is of opinion that, looking at the system as a whole, the results as tested by figures are not satisfactory, and that the system should be reduced nearer to the level of a trial by assessors only. Messrs. Prinsep, Wilson, Pigot, and Macpherson state that the system has not been altogether successful in its results, and that improvement is necessary. Messrs. Amir Ali and O'Kinealy write that the system has not satisfactorily answered the object for which it was devised; that in cases of homicide even when the crime is of an atrocious character, Indian jurors are averse from bringing in a verdict which would subject the accused to capital punishment; that in other cases, *e.g.*, dacoity, rape, etc., race-feelings and popular prejudices play a great part, with the result that gross miscarriage of justice has often been occasioned by trials by jury; that in certain kinds of cases conviction, in others acquittal, is a foregone conclusion; and that the system of trial by jury requires considerable improvement in its application in order to become an efficient agency in the investigation of facts. Mr. Justice Trevelyan thinks improvement necessary in allowing appeal as of right and in compelling the Judge to refer to the High Court cases in which he differs from the jury. Messrs. Norris, Ghose, and Banerjee, quoting the same returns as Mr. Justice Tottenham, say that they venture to think the facts and figures warrant their saying that the system has worked well on the whole, and that the results of their experience lead them to the same conclusion, but that some of the references which have come before them have disclosed cases of verdicts which they could not but think were opposed to the weight of the evidence. Mr. Justice Beverley thinks that, although the system in the mofussil has worked fairly on the whole, instances of wrong verdicts occasionally occur, especially in certain classes of cases. The four Divisional Commissioners consulted are entirely opposed to the system. The Commissioners of the Presidency and Burdwan Divisions would abolish it altogether, and the Commissioner of Dacca would substitute assessors for jurors. The Commissioner of Patna states that he concurs with the general opinion that the system is not suited to the country. The Inspector-General of Police thinks that it is not worth continuing the system even under restrictions. Of the nine Sessions Judges consulted, seven pronounce trial by jury to have been a failure. Of the two Judges who express themselves favourably of the institution, one states that it is difficult to get juries to convict in capital cases, whereas there is a tendency to convict old offenders and dacoits on the slenderest evidence; and the other says that many a verdict of acquittal is given simply because the jury consider that the prisoner has suffered sufficiently before trial, and because they are afraid that a verdict of guilty will be followed by a punishment out of all proportion to the offence. None of the Magistrates of jury districts—except the Magistrate of the 24-Pergunnahs—speak at all favourably of trial by jury: some of these officers express themselves very strongly against it: thus Mr. Romesh Chunder Dutt, Magistrate of Burdwan, writes: "During the short time I have been in Burdwan, the jury system has worked in a manner most detrimental to the interests of justice and the repression of c ime."

4. The statistics before Government, which show the results of jury trials, are of great significance. In an article published in the January number of the *Calcutta Review* for 1888, Mr. Beighton, now Judge of Dacca, points out that of 1,060 jury trials in Bengal in the four years 1882—85, the Sessions Judge dissented in 249 cases, or 23·5 per cent. From the Minutes of Mr. Justice Tottenham and Messrs. Norris, Ghose, and Banerjee, it appears that of the 1,708 cases tried by jury in Bengal and Assam in the five years 1885—89, the Sessions Judge disapproved of the verdicts in 325 cases, or about 20 per cent., and referred 114 cases, or 6·7 per cent., to the High Court, who set aside the verdicts in 63 cases, or 3·6 per cent. A very remarkable fact is stated in Mr. Justice Prinsep's Minute, that six cases were referred from five different districts during the last vacation, and that Mr. Justice Wilson and he refused to accept the findings of the juries in any of them, holding that "in none of these cases could there be any doubt that the jury obstinately refused to convict of murder against the clearest evidence." The Officiating Judge of Dacca shows that in the years 1887, 1888 and 1889, the Sessions Judge of that district disagreed in part or whole with the findings in one in three of the 124 cases tried by jury, but he only ventured to refer 12 of these, in seven of which the High Court reversed the verdicts given. The Commissioner of Dacca refers to a scandalous case tried in 1884 in the Dacca District, and notices four cases in 1888 in which the High Court set aside the findings of the juries. In Nadia, where the system has not been so condemned as elsewhere, the Sessions Judge disagreed in 177 or 11·3 per cent. out of 1,5 63 cases tried since 1862. A large number of figures has been given showing the proportions of acquittals and convictions by juries, as compared with acquittals and convictions in non-jury districts; but the Lieutenant-Governor does not desire to lay much weight upon these. He thinks the verdicts should be judged by the proportion of cases in which the Sessions Judges have dissented or the High Court interfered, and in considering such cases, it is necessary to bear in mind the reverence with which the system of trial by jury is regarded in England, and the consequent bias which exists in the minds of English Judges against disagreeing with the verdicts of juries. This feeling is given expression to in the ruling of the Calcutta High Court in the case of Sham Bagdi, 20 W. R. 74, as follows:—"If the High Court is to interfere in every case of doubt in any case in which it may with propriety be said that the evidence would have warranted a different verdict, then it must be held that trial by jury is absolutely at an end." Taking this in consideration, the figures given above are much more telling than they at first appear.

5. A careful consideration of the opinions and figures now obtained leaves no doubt in Sir Charles Elliott's mind of the failure of the jury system in these Provinces in its present shape. It would be scarcely possible to obtain opinions from a large number of men more nearly approaching to unanimity than is the condemnation of the jury system in Bengal contained in the reports and Minutes above referred to; and it appears to the Lieutenant-Governor that there can be no more convincing proof of its failure than this. His Honour thinks that if the result could have been foreseen, no advocate would have been found for the introduction of this Western institution into India. But as it has been introduced, and is prized as a rudimentary beginning of giving power to the people, Sir Charles Elliot deems it inadvisable on political ground that it should be abolished altogether, but he would take early steps to make such changes in its working as seem best calculated to limit the injury to justice which it entails

6. All the Judges of the High Court are agreed upon one point, *viz.*, that some extension of the right of appeal should be made. Messrs. Prinsep, Wilson, Pigot, and Macpherson recommend that there should be an appeal on the facts, at least against a verdict which is not a unanimous verdict, whether it be for a conviction or not. This is much the same as a suggestion made by Messrs. Norris, Ghose, and Banerjee, and none of the other Judges seem opposed to it. The Lieutenant-Governor accepts with a slight modification the recommendation on this point in Mr. Justice Prinsep's Minute, and would amend the law so as to provide that there should be an appeal on the facts whenever the jury is not unanimous, unless the Judge records his agreement with the majority.

7. Still more important is the proposal that section 307 of the Criminal Procedure Code should be amended so as to make it incumbent on the Sessions Judge to refer to the High Court every case in which he differs in opinion from a jury. This is the opinion of Messrs. Prinsep, Wilson, Pigot, Macpherson, Trevelyan, and Beverley. There can be little doubt that if the reference in such cases were made obligatory by the law, one effect would be to counteract the tendency of the High Court "to refuse to interfere with verdicts unless satisfied that they were altogether perverse or otherwise insupportable." These are the words of Mr. Justice Tottenham; and Mr. Prinsep's Minute, which is concurred in by three more High Court Judges, shows that the practice of the High Court in dealing with references is still unsettled, that the uncertainty prevents Sessions Judges from referring cases in which they think that the verdicts are contrary to

the weight of the evidence, and that consequently failures of justice not unfrequently occur. Sir Charles Elliott entirely agrees to make references compulsory in all such cases.

8. It has also been suggested by several of the most experienced Sessions Judges that section 303 of the Criminal Procedure Code should be altered so as to make it incumbent upon the Judge to ascertain and record fully the reasons of the jury for their verdict. It is pointed out that as long as the right of interference with a verdict exists, the reasons which guide a jury to a certain finding are among the most important elements in arriving at a conclusion whether a verdict is reasonable or not. His Honour is disposed to favour the proposal because it is a simple but reasonable way of enabling the Judge to be sure that he ought to disagree with the jury.

9. Several of the Honourable Judges and the great majority of the officers consulted are of opinion that the system of trial by jury in Bengal is particularly unfitted for certain classes of cases, especially those relating to murder. Sir Charles Elliott is aware that the power of withdrawing classes of offences from juries rests with the Local Government: but as the Government of India has referred the question specially for the Lieutenant-Governor's opinion, he deems it better to submit his views, and not to give effect to them on his own authority. His Honour would withdraw the whole of Chapter VIII of the Indian Penal Code, offences relating to public tranquillity, the whole of Chapter XVI, offences against the human body, except those triable by jury in the North-Western Provinces, *viz.*, kidnapping, abduction, and rape, and also the whole of Chapter XVIII, offences relating to documents and trade-marks. He would leave to juries all Chapter XVII, offences relating to property, and would add to their power Chapter XX, offences relating to marriage. Sir Charles Elliott considers the evidence adduced clearly points to the necessity of making the withdrawals proposed.

10. A great deal has been said by Sessions Judges and local officers concerning the *personnel* of jurors, and suggestions have been made that some qualifications as to property, education, and respectability should be laid down by law. The Lieutenant-Governor conceives that it is possible that suitable men have not been selected for jurors in many districts; but His Honour thinks that this is due to the failure of the Judges and of the other officers associated with them under section 321 of the Criminal Procedure Code, to take care that only qualified persons are entered in the jury lists prepared by them, and he proposes to impress strongly on all Judges in jury districts that under the law they are primarily responsible in this matter. In some districts where suitable men are difficult to obtain, the Local Government might with advantage fix the number of jurymen at a trial at three instead of five as at present. This matter will be separately considered. His Honour thinks it neither necessary nor desirable to reserve any class of cases for special jurors, especially if capital cases are no longer to be triable by jury. Careful calculations should be made of the number of jurymen likely to be required in a jury district every year, and care should be taken that the most suitable men up to that number are entered in the lists. The Lieutenant-Governor would raise the limit of age to 25, but cannot see his way to advising that any rules as to qualifications should be prescribed by law.

11. Sir Charles Elliott hopes that if the various improvements suggested in this letter are adopted, the almost universal complaints of failures of justice in some of the most serious cases under the criminal law will cease, and that this reform will be effected without much outcry from the educated classes.

From H. F. MATTHEWS ESQ., Officiating Sessions Judge of Burdwan, to the Chief Secretary to the Government of Bengal—No. 1606, dated the 7th July 1890. No. 5

Referring to your Office Circular No. J. $6\frac{T}{2}2$, dated 23rd June 1890, I have the honour to state that my experience of the working of juries has been rather limited, but that, so far as it goes, I consider the system as prevailing in the Bengal mofussil to be, in general, a complete failure. As regards its merits as a means for repression of crime (to quote the words of the Government of India's letter), I am inclined to think that they do not exist. It is hardly to be expected that a system which in many advanced European countries has only been introduced within the memory of persons now living should prove adapted to the widely different circumstances of the Indian mofussil.

2. So far as I have seen, the tendency of the native juries with reference to charges of homicide is almost invariably to acquit even in the plainest cases. With regard to offences against property, they evince a greater tendency to convict, though even in trials for this class of crimes, verdicts quite at variance with the weight of the evidence are far from uncommon. For the Judge to proceed under section 307, Criminal Procedure Code (except in the most

flagrant cases), is generally worse than useless, as he simply wastes his own time and that of the High Court as well. I am not inclined to recommend any more extensive powers with a view to the rectification of improper verdicts being conferred on judicial officers. Until such a change takes place in public sentiment as is consistent with the beneficial action of the jury system in the mofussil, I think it would be far better to suppress the institution there altogether, than to legislate in the direction above alluded to.

3. The failure of the jury system as a means for the repression of crime may be traced to various causes, the chief of which I consider to be two—first, the absence of anything in the Indian mofussil corresponding to the British middle class from which the bulk of jurors in the United Kingdom are ordinarily drawn ; second, the intense distrust and aversion with which the police is generally regarded by the people of this country. As regards the first cause, it may be said that its operation is practically to limit the selection of jurors to the pleader and muktear class. The upper ranks of native landholders will do almost anything to escape serving on a jury. The lower are sometimes prevailed upon to serve, but they are not in general possessed of the inclination or ability required for the independent formation of a sound conclusion on a complicated mass of facts (however clearly put before them), and are moreover particularly liable to be led astray by the specious sophistries of an able advocate. Thus, they are apt either to form a wrong opinion on their own account, or, more frequently, to acquiesce at once in the conclusions arrived at by one of the lawyer members of the jury in order to save themselves the trouble of thinking or to avoid the invidious duty of returning a verdict against the prisoner. With reference to the second cause, of course the only remedy lies, as has been pointed out so often, in the improvement of the pay and prospects of the police, especially in the lower grades, so that they may be above the temptation to corruption to which they are now so generally exposed. The present practice of allowing officers under the grade of Sub-Inspectors to investigate heinous cases should be entirely stopped. I think myself that every case likely to be committed to the Sessions ought to be investigated by an Inspector or first grade Sub-Inspector at the very least. The suggestion of corruption or partiality in the case of the investigating police officers is the most familiar, as well as the most effectual, way of breaking down a strong case against a prisoner now adopted by the mofussil criminal bar, and its success is quite proportional to its frequency.

4. While, with reference to the above remarks, it will be seen that I could not conscientiously recommend any extension of the jury system, I think it doubtful whether its abolition in the districts where it has now existed for many years could be accomplished without exciting a degree of apprehension in the minds of the inhabitants, and a distrust of the motives of Government, which it would be scarcely worth while, under all the circumstances, to provoke. In those districts, therefore, all efforts should be made to improve the working of the system as it is. The duty should be rendered less onerous and unpopular. The old practice of summoning juries only from within a certain area within comparatively easy access of the sudder station should be reverted to. The present system by which they are liable to be summoned from all over the district causes needless annoyance and expense to a great number. Better provision should also be made in the local court-house for the accommodation of jurors than generally exists at present. In one jury district in which I was employed there was even no withdrawing room for the jury to retire to for deliberation. The presiding officer should do everything in his power to promote the comfort and convenience of the jury and to impress them with a sense of their own importance and the serious character of their functions. The duty may thus in time become less unpopular than at present, and the natives of the better class be induced to regard it with less aversion. In such circumstances there can be no question but that the character of the work done by juries will gradually improve.

From F. F. HANDLEY Esq., Sessions Judge of Nadia, to the Secretary to the Government of Bengal, Judicial Department,—No. 477, dated the 19th July 1890. Nos. 43—46.

With reference to your No. J $6\frac{T}{2}$2, dated 23rd June 1890, I have the honour to submit the following report.

The jury system was introduced into this district from the year 1862.

The annexed table A will show that from the year 1862 down to 1883 the convictions always exceeded the acquittals. But it must be observed that under the first Criminal Procedure Code the powers of Magistrates were somewhat limited, and many offences then only triable by the Court of Sessions were made triable by Magistrates. Hence the number of commitments has fallen off since 1862, and now averages about 40 per annum.

Next it will be seen that up to the year 1869 the cases wherein the Sessions Judge disagreed with the jury were few. In 1870, 1871, 1883, 1884, and 1888, the cases of disagree-

ment are alone remarkable. But it is further to be noted that this only represents the note by the Sessions Judge in the calendar of his concurrence with or disapproval of the verdict of the jury. It does not represent the number of cases referred by the Judge under section 307, Criminal Procedure Code, which may represent perhaps only 1 per cent.

This expression of concurrence or disapproval is after all only an opinion of the Judge as against the verdict of the jury, and is only recorded for statistical purposes submitted with the annual report on the nature of the working of the jury system during the year.

2. There have been two special reports submitted to the Honourable High Court on the jury system from this district—

(1) By Mr. (afterwards Sir Rivers) Thomson, No. 33, dated 28th February 1863.

(2) By Mr. (afterwards Sir W. J.) Herschell, No. 14, dated 24th January 1872.

There was a report submitted by Mr. Dickens, No. 290, dated 12th September 1882, to Government, on a serious defect in the working of the system.

If the above reports of Mr. Thomson and Mr. Herschell are not before Government, I would recommend that copies be procured from the Honourable High Court, as they are of some length and contain the views of officers of distinction, whose opinions on the point are valuable. This much was remarked by Mr. Thomson : "The system of jury trial here is, I think, a salutary one in the interests of justice. I should be sorry to see it removed. Every year shows an improvement in the knowledge acquired by jurors of their duties and in the manner of their discharge."

3. The following are extracts from the Annual Reports on the Administration of Criminal Justice :—

1866. *Paragraph 15.*—"I do not myself see much advantage in the system ; it certainly gives a large number of jurors to pick from, and thus lightens their duties, but it delays work."

Mr. W. F. MacDonell.

1867. *Paragraph 15.*—"The juries as a general rule take great interest in the cases tried by them, and every year they are improving and acquiring a better knowledge of their duties. The system is answering, I consider, as well as could be expected."

Mr. W. F. MacDonell.

1868. *Paragraph 15.*—"I have myself generally found the jury of great assistance, and, as I said last year, consider the system to be working as well as could be expected."

Mr. W. F. MacDonell.

1869. *Paragraph 15.*—"I am of opinion that the system has not broken down in the way that many hold it has. The jury system has had a very fair trial in Nadia, and though I do not say that in a few cases there had not been a failure of justice, yet the cases have been but few, and as a general rule I have found the jury a great assistance."

Mr. W. F. MacDonell.

4. From 1870 to 1878 no remarks appear to have been made.

In 1879 the Honourable High Court made the following remarks on the Annual Report submitted by Mr. Dickens :—

"The Judge of Nadia, who was, however, in charge for a portion of the year only, reports that he had every reason to be satisfied with the working of the jury system, so far as it came under his observation, during the three Sessions at which he presided. In 39 cases heard by him there were 26 convictions and 12 acquittals, and in the remaining case one person was convicted and one acquitted."

In 1880 the same Judge made the following remarks :—

"I have every reason to be satisfied with the working of the jury system, except perhaps, in murder cases. The disinclination of Hindoos to convict capitally is notorious and it is, I think, worthy of the consideration of Government whether this disinclination, based as it is on deep-seated religious convictions, does not constitute a sufficient reason for withdrawing such cases from trial by jury. Failures of justice constantly arise from this cause. In my opinion either the punishment of death should be abolished or the power of finding on facts necessitating the punishment should be withdrawn from persons whose religious convictions militate against returning a proper finding. Having to choose between two conflicting duties, they not unnaturally adopt what they consider the paramount duty of blood-guiltlessness. I may mention as an illustration the remark of a juryman, not of course made to the court, which came to my knowledge through a trustworthy source. Five persons were charged with murder, but the majority of the jury acquitted, though, I have no doubt, they would have found a verdict on the facts had a capital sentence not been the probable legal consequence. The remark was 'that it was better that one man should be killed than that five others should be killed for killing him.' I believe this remark to have been made in perfect good faith.

No further remarks till in the Report of 1888, whence in paragraph 11 the following occurs by the present writer :—

"I find that my predecessor disapproved wholly of the verdict of the jury in four, and partially in five cases. Myself I thought in one case the jury took a hard view of the facts against the prisoner. During the Sessions over which I presided, the jury convicted in every one of eight cases in the November Sessions."

In 1889 the same Judge remarked in paragraph 10 as follows :—

"Of the 35 cases disposed of, in 31 cases the Sessions Judge approved of the verdict. In one case the verdict was disapproved of and referred, and the prisoner was convicted of murder and sentenced to death. In three cases the verdict was wholly disapproved of, and in one case partially disapproved of, but no reference was considered necessary in these four cases, they being of no public importance. In the case of Diragatullah Sheikh, No. 2 of July Sessions, the Court summed up for a conviction of grievous hurt, and the jury returned a verdict of simple hurt. Of the three cases wholly disapproved of, one was No. IV of July Sessions. The charges were of culpable homicide and hurt against Sabil and Jemadar Fakir. The jury found Sabil only guilty of hurt. The evidence was the same against both. The next case was No. IX of September Sessions. It was a charge of an unnatural offence upon a school-boy by a respectable elderly resident of Santipur. The question was one of fact, and though the Court had no reason to doubt the guilt of the accused, the jury acquitting on the facts, no reference was made. The last case was No. 12 of September Sessions. It was a charge of abandoning an infant. The jury acquitted on the ground that the woman was 'not all right.' Thus on the whole this Court expresses a favourable view of the working of the jury system. In no case was the verdict of the jury perverse except in the murder case. The other verdicts were honest expressions of opinion of which the jury in the case of Diragattullah took a lenient view of the act whereby death was caused, and in the other three cases gave the prisoners the benefit of the doubt the jury entertained."

5. Thus it will be seen that up to the present there has been, on the whole, a feeling on the part of Sessions Judges in favour of the jury system in this district.

6. On receipt of the circular under reply, the opinions of the Bar Library and the Government Pleader were called for, and I append copies of the replies received (B and C). I am inclined to agree with the views expressed in their reports. I myself express a favourable opinion in favour of the jury system. On the few occasions where the Judge disapproves of the verdict, as already observed, it is after all only a difference of opinion on a view of the facts in which the opinion of the five jurymen is likely to be more correct than that of the Judge, and that this is so is shown by the small number of cases wherein the Judge considers it necessary to refer the case to the Honourable High Court against the verdict of a jury. That mistakes are occasionally made cannot be denied. It is difficult to get juries to convict in capital cases, whereas there is generally a tendency to convict *dágis* or old offenders and dacoits on the slenderest of evidence.

7. I concur with the Bar Library and the Government Pleader that it would be impossible to abolish the system. It cannot be supposed that Sessions Judges can dispose of Sessions cases alone. Either assessors must be employed or juries, and of the two I consider juries infinitely preferable. The assessors are not sworn. The Judge is not bound to follow their *opinion* (not verdict). This fact is well known to the general body of assessors, and is not without its effect. I have heard rumours of the bribing of assessors, but only once of bribing a juryman.

8. Thus the jury system being accepted, the question is whether it cannot be improved, and I consider, with the Bar Library and Government Pleader that it can.

In the first place under section 321, Criminal Procedure Code, the Sessions Judge has no voice in the preparation of the list of jurors. This is done by the Collector. How the names are selected, that officer can say. I can concur with the Government Pleader that occasionally illiterate jurors have presented themselves. As an administrative matter, I think more care should be exercised in selecting jurors. If Sub-Inspectors of Police submit lists of names through the collectorate head-clerk, it is probable many are omitted who ought to be on the list, and others submitted who were better absent from the list.

Next I think the suggestion of having a special jury list, as in Calcutta, is an excellent one. In murder and dacoity cases or any other exceptional cases, whenever the Judge ordered it either of his own motion or on the application of either party, special juries could be summoned.

9. Then I consider that Sessions Judges should be vested with power to declare a charge unsustainable, as is possessed by a Judge of the High Court under section 273, Criminal Procedure Code. In this last half-year, out of 39 persons committed, there were three persons with respect to whom the Sessions Judge would have entered up that the charges were unsustainable. The percentage of acquittals to convictions is thus increased. Say there are 50 committals and 10 unsustainable, 20 convictions and 20 acquittals; the acquittals would amount to 30 as against 20 convictions, because of the want of the power of entering up "Charge unsustainable." Moreover, the inclusion in a charge of one against whom the

evidence is weak weakens the case against the others, because mofussil juries are not strong in the power of discriminating between varying degrees of guilt.

10. Thus on the whole my opinion is the jury system is working as well as can be expected, that on the one hand it can be reformed by greater care in the selection of the jurors and in the creation of a new list of special jurors, and on the other hand the administration of criminal justice can be improved by empowering Sessions Judges under section 273, Criminal Procedure Code.

A.

Statement of trials by Jury in Nadia for the years—

	Convictions.	Acquittals.	Total.	Judge agreed with jury.	Judge disagreed with jury.	Reference to High Court under section 307, Criminal Procedure Code.
1862	40	39	79	77	2	...
1863	22	18	40	36	4	...
1864	30	17	47	43	4	...
1865	27	25	52	48	4	...
1866	43	28	71	68	3	...
1867	49	19	68	67	1	..
1868	25	24	49	46	3	...
1869	48	18	66	63	3	...
1870	33	12	55	35	10	...
1871	45	31	76	60	16	...
1872	32	22	54	49	5	...
1873	49	19	68	64	4	1
1874	39	13	52	46	6	1
1875	47	17	54	57	7	2
1876	42	20	62	53	9	4
1877	43	20	63	55	8	7
1878	34	12	46	41	5	4
1879	49	32	81	73	8	5
1880	38	14	52	37	9	6
1881	26	22	48	43	5	4
1882	42	17	59	54	5	2
1883	26	18	44	33	11	3
1884	25	31	56	46	10	8
1885	21	8	29	24	5	3
1886	27	15	42	37	5	4
1887	17	19	36	29	7	2
1888	28	12	40	30	10	3
1889	13	22	35	31	4	1
1890 ½ year	25	14	39	35	4	1

B.

From Babu RAJENDRA LAL LAHIRI, Secretary to the Bar Library, Kishnaghur, to the Sessions Judge of Nadia,—dated the 19th July 1890.

With reference to your No. 445, dated the 8th July 1890, I have the honour to submit my report on the three points noted therein, *viz.*, (1) the working of the jury system, (2) its merits as a means for the repression of crime, and (3) what improvements, if any, are called for in its application.

As to the first, the members of the Bar Library are of opinion that the system is a very salutary one in the interests of administration of criminal justice. The advantages of this system are manifold. The material assistance which an intelligent jury can afford in gleaning out truth from the intricacies of a mass of questionable evidence very often placed in a Sessions trial, which may not unlikely puzzle an English Judge of small experience of the country in dealing alone with it, their intimate knowledge of all matters connected with the domestic life, habits, manner and customs of the people, their thorough acquaintance with the multifarious questions of caste and religion of their fellow-subjects, and above all their being regarded as a safeguard against errors of judgment, and a guarantee that even the minutest details of a case will receive the most careful and anxious consideration before any conclusion is arrived at, cannot fail to induce any one to pronounce a verdict in favour of the continuance of the system. There may be occasional cases of complaint against it, but they are generally more imaginary than real, and are due to accidental circumstances. The fact that there are

several acquittals in trials by jury cannot in any way detract from its utility. The imperfect and careless way in which committals are in very many cases made, the inexperience of some of the committing officers, the inordinate desire of the police to secure convictions by means, foul or fair, the harsh, too technical interpretations given by Magistrates of short experience to the already stringent provisions of the Penal Code, and the injudicious selection of jurors in some instances (generally nominated by subordinate police officers at the time of the annual preparation of the list), may well account for those acquittals which are said to be open to objection. The members have no hesitation in saying that the system has worked very satisfactorily in this district on the whole.

With reference to the second point, I beg most respectfully to submit that the merits of the system as a means for the repression of crime depend in a great measure on the absence or otherwise of the defects of the system indicated above, which are quite susceptible of reform. Considered as an abstract question, a better system of trial cannot be devised.

In respect to the third point I beg to state that some improvements are necessary to render the system as efficient as it could be wished. In the first place it seems to the members of the Bar Library that there ought to be some sort of qualification which a person is to be possessed of before he can be enlisted as a juror, so as to secure a set of sufficiently intelligent jurymen. This course, it is hoped, may to a great extent minimise, if not wholly do away with, the difficulty complained of in very rare cases. At present the list of jurors is prepared from information obtained from Sub-Inspectors of Police in charge of police stations, without any attempt on the part of the more responsible magisterial officers at ascertaining the mental capacities and other attainments of the men nominated. A man who in point of education has not read up to the standard of vernacular scholarship examination, or who in a pecuniary point of view is not worth R200 per year, is, in the opinion of the members, hardly qualified to fill the responsible office of a juryman.

In the next place, the members are of opinion that there ought to be some provision in the Code, authorising the keeping of a list of special jurors (much like that of a High Court, as provided for in the Code) in the Mofussil Sessions Courts. The special jury is to be empanelled at the discretion of the presiding officer at the instance of the Government Pleader, or the accused in exceptional cases, thus avoiding the risks which may be apprehended in the case of a chance jury. The members of the Subordinate Judicial Service residing at the sudder station may be made *ex-officio* special jurors, which may give them a training in the criminal branch of the administration of justice, a training which may be of ample use to them whenever they may be called upon to discharge any or all of the functions of the Court of Sessions Judge in any place.

C.

From Baboo RAM CHANDRA MUKERJI, Government Pleader, Nadia, to the Sessions Judge of Nadia.

In reply to your letter No. 445, dated 8th July, I have the honour to state for information that the system of trial by jury is working well in this district. I have been working out this system from the time of its introduction in this district, and I have no reason to complain against it. In my humble opinion the system is a salutary one in the interests of administration of criminal justice, and it does great assistance to the Judges in determining the truth of intricate facts concerning the manners, habits, domestic affairs, etc., of the natives of this country. No doubt there were some cases in which the verdict of the jury was at first considered unsatisfactory; but it afterwards came to light that such unsatisfactory verdict was the result of the misconduct of the parties themselves, or of the police attempting to prove too much in a case. Sir Rivers Thompson and Sir William Herschell at first seemed to be against the system, but as they gained experience in the administration, they had to change the opinion they formerly entertained, and they afterwards reported in favour of the system. As far as I know, your predecessors in office were all satisfied with the working of the system in this district, and that they had, as a rule, no reason to make any complaint against it.

With reference to the second point I need not say much : the system, if it be worked out satisfactorily, will be a good means for the repression of crime. The number of acquittals in trials by jury may sometimes appear to be great owing to bad commitments rather than to the system itself. If the committing Magistrates be a little more careful and scrutinize the acts and conduct of the police before making any commitments, the result of trials in the Sessions Court will be more favourable than at present. The Judges have often found that the police were wanting in their duty, inasmuch as they had failed to make proper enquiries during their investigations before sending a case to the Magistrate.

In reference to the third point, namely, improvements that could be suggested in the way of the application of the system, I beg to say that the list of jurors prepared under section 321 of the Criminal Procedure Code ought to be more carefully prepared than at present. Persons not at all fit for doing the duties of the jury are now indiscriminately enlisted without any regard to their education and position in life. I remember cases where persons who can scarcely sign their names were selected as jurors, in such important cases as murder, forgery, etc., and there is nothing strange that in such cases a failure of justice will be the expected result.s I should therefore think that persons whose names will be enlisted in the jury list should be men of certain qualifications, and the names of such persons ought to be collected by more responsible officers under the Magistrate of the district.

I should also consider that there should be a list of special jury who can be called to sit over trials in cases which the Judge thinks important and sensational. On this point my suggestions have been given in the opinion that has been expressed from the local bar, and I need not say anything further except that the special list should contain the names of persons of known abilities and probity, whether they be private gentlemen or officers employed under Government in the district.

Nos. 47–48. From J. TWEEDIE, Esq., Judge of Patna, to the Officiating Under Secretary to the Government of Bengal,—No. $\frac{\text{Sct.}}{197}$, dated the 21st July 1890.

I have the honour to acknowledge the receipt of your letter, bearing the mark "Judicial Circular No. J. $6\frac{T}{2}2$," and dated 23rd June 1890, forwarding a copy of a letter of the Government of India in the $\frac{\text{Home Department}}{\text{Judicial}}$, dated 31st May 1890, calling for a report on certain points stated, bearing on the jury system.

2. In reply I beg leave to annex a report on the points prescribed, and send the report in a despatch form and without passing it through the office here, so that it may not obtain any further publicity than the Government thinks fit to give it.

No. $\frac{\text{Sct}}{197}$, dated 21st July 1890.

Report on the jury system sent in reply to the letter of the Under Secretary to the Government of Bengal in the Judicial, Political and Appointments Departments—"Judicial Circular No. J. $6\frac{T}{2}2$, dated 23rd June 1890," forwarding a copy of a letter from the Government of India in the $\frac{\text{Home Department}}{\text{Judicial.}}$, dated 31st May 1890.

The points on which a report is asked are these—

(i) The working of the jury system.

(ii) What opinion is entertained as to the merits of the system.

(iii) What improvements, if any, are called for.

2. *First point.*—On the first point I beg leave to make the following remarks.

3. In my opinion the system of trial by jury has not worked well, and I hardly think that, in the near future at least, it is likely to work much better.

4. The principal circumstances which militate against its working well are these—

(i) A want of good material out of which to get good jurymen, resulting from defect of general intelligence, absence of a liberal education, deficiency of experience in affairs, and like causes.

(ii) Caste and social prejudice.

(iii) An objection on the part of many men to much of our law—as, for example, the law of joint-liability for crime and (especially in the case of Mahomedans) to our law of evidence, which does not render "eye-witness" indispensable.

(iv) The common feeling against convicting in any case of homicide lest the guilty person should be hanged.

(v) The further feeling that it is a good and generous action to help a guilty man to escape.

(vi) Downright sympathy with some forms of crime, such as perjury and forgery.

(vii) Amenability to external influences—fear, favour, popular sentiment, and money-payments.

(viii) An eagerness to seize on any small point of difficulty in a case or "discrepancy," so as to throw out the case on that.

(ix) An inability, or unwillingness, to balance this against that and reach a decision by a critical treatment of the whole of the materials before them.

(x) Almost complete irresponsibility.

(xi) The total absence of public or social condemnation for such an act as returning a false verdict.

(xii) The absence of moral, not to say religious, training from the up-bringing of a large part of the community.

(xiii) The impossibility of keeping a jury apart from the general public in cases which last more than a day; and these are the majority.

5. *Second point.*—On the second point I beg leave to make the following remarks :—

6. I have held conversations with gentlemen of standing as to the opinion entertained by them of the merits of the jury system in the matter of the repression of crime.

7. The opinions expressed are universally unfavourable. As one gentleman said, "*the theory is excellent, but* ······" Gentlemen of standing will do much in order to avoid serving on a jury. This arises from three causes—a sense of incompetency, caste or class prejudice against being closely associated with men of inferior status, and a natural objection to mixing themselves up with a body of men whose integrity in the discharge of their duties is more than a matter of mere suspicion.

8. I have been told that the great body of the people, high and low, excepting only persons who are wrongly interested in the maintenance of the system, would be glad to see it swept away. But many, even of those who do not want to retain it, would probably seize on its abolition as the basis of a sentimental grievance, and I suppose that its abolition is not now practicable; but it seems to me that, unless matters are to go from bad to worse, the classes of cases which are tried by jury in Bengal ought to be reduced (*see* below, paragraphs 14 *et seq.*)

Third point.—On the third point I beg leave to make the following remarks.

10. The Magistrate and myself are at present engaged in revising the jury list, and are giving much personal attention to the work. Our aims are to take the compiling of the list out of the hands of the police; to raise the social and educational status of the jurymen; and to secure a better representation of all suitable classes of the community, so as to check the tendency of jury business to become an ordinary branch of legal professional work. Our endeavours are also directed to enhance the reputation of the jury in a proper direction, and to induce persons to consider service on a jury as an honourable part of their duties as citizens (as the office of an Honorary Magistrate is regarded), but on this last point we hardly hope, at least at first, to succeed, for the past record is sadly against us.

11. Still we hope for considerable improvement as the result of our work, and I mention it in order that, perhaps, similar attempts may be made elsewhere.

12. Another point is that in every district there should be a select "special jury" list, to be used in the sole discretion of the judge, in order to draw from it either a whole jury or some members of a jury.

13. There should also be given to the Judge a power to draw the lots, not from the common bag or box only, but from classes, when he thinks it desirable to have on the jury, in any particular case, any particular class of juryman—Hindu, Mahomedan, banker, jeweller, cloth merchant, and so on. It gives one a great feeling of security, as regards probity and intelligence, to find even one Christian (European or superior Eurasian) in the jury box; but at present, if I deliberately drew such from the bag, I should be "packing" the jury.

14. Lastly, in the interests alike of honesty, human life, and the administration of justice, it has become necessary to withdraw from the cognizance of juries certain classes of cases.

15. In many parts of Bengal there is a regular system of settling disputes—chiefly about land—by a kind of petty warfare, and this is encouraged by a knowledge that a "conviction" hardly ever follows on trial. The chief reason why convictions fail here is that behind the actual rioters there are powers which the provisions of the Penal Code never, within my experience, reach—namely contending zemindars or, more commonly, thikadars, who, unless universal report is wholly at fault, hesitate not to bring unlawful influences to bear on jurors; while the common belief, further, is that these influences are not as a rule resisted. We may thus have either a conviction or an acquittal based on something which has nothing to do with the facts of the case or the evidence given in it.

16. Therefore, in my opinion, all cases falling under Chapter VIII of the Indian Penal Code, and also all offences committed at a riot, whether such that the rioters are all responsible for them under section 149 of the Code, or such as only the individual offender can be held answerable for, should be withdrawn from the cognizance of the jury.

17. Another class of cases with which, in my opinion, a jury is wholly incompetent to deal is that composed of giving false evidence and bringing false charges.

18. The short reason for this is that these are offences for which the ordinary native mind has no abhorrence.

19. A third class is made up of offences relating to documents. There are two reasons for withdrawing these—*first*, that just given bearing on false evidence and false charges: and *secondly*, because our law of documents (Chapter XVIII, Indian Penal Code) is so complex that no jury seems able to understand it. Moreover, the native has his own ideas of offences relating to documents, even where he recognizes that an offence has been committed, and to these he adheres, and cares not about Chapter XVIII of the Penal Code.

20. Good also comes, I think, of Judges persistently, but with careful discretion, submitting erroneous verdicts for revision by the High Court under section 307 of the Code of Criminal Procedure. This is the only check on the irresponsibility of a jury. It may be out of place for me to say anything about the High Court, yet I will venture to remark that that Court exercises its powers freely, and with full consideration of the matters submitted to it. Thus, out of three cases which I have sent up during the past months, two of the verdicts (acquittals) were reversed; in one instance (also of acquittal) the Honourable Court recorded no approval of the verdict, but said that it was not so bad as to justify interference. These three acquittals were recorded, respectively, in cases of homicide (without rioting), false charge of murder, and homicide in rioting. The first two were reversed; the last, without being approved, was allowed to stand.

21. References of this kind, when successful, have good effect; but what causes a Judge to hesitate before making them is the feeling that an unsuccessful reference is worse than no reference at all.

22. The working of the jury would, I think, be improved if the police were prohibited from making a record of so many "statements" as they now make under section 161 of the Code of Criminal Procedure. They are naturally both incomplete and also in excess of what is allowed for judicial purposes, inasmuch as the police are quite right to record "hearsay" evidence for their guidance. Yet juries do not distinguish these matters, and on finding that a person has told the police something which in court he, or she, is compelled to admit was not "known" to him, or to her—as knowledge for judicial purposes is required to stand—the case at once becomes jeopardised.

23. It will be remembered that it is always in the power of the defence to summon the investigating police officer and to require him to bring all his records (except the diary) with him for the purpose of thereby "refreshing his memory." Moreover, even in cases in which it is quite plain that the investigating officer cannot possibly know anything personally about the occurrence, still it is an "argument" which always "goes down" with a jury to ask "why the Crown has not *dared* to place before you the evidence of the investigating officers"?

24. Similarly, if at any future revision of the Code of Criminal Procedure any plan could be found by which enquiries by committing officers could be made a little less like "trials," much advantage would be gained. In Scotland, I believe, such matters are managed with privacy, if not secrecy, and with good results. If committing officers could perform the functions —or at least the earlier part of them—performed by the "Procurator Fiscal" in Scotland, we should be much more likely to reach the truth than we are under our present system of public quasi-trial before committing officers.

25. Given a jury, copious police papers, and a prolonged enquiry in the court of the committing officer, and the result—if depending honestly on what is heard by the jurors at the trial—may be foretold. In vain are the "jurors" told that not even they themselves could give an identical account of a complicated matter three times with long intervals often between. No, *there* are the "discrepancies," and so the case is false.

26. I would say lastly, that in my opinion no man should be appointed to a jury district who cannot speak its language as it ought to be spoken, fluently and colloquially. It is probably true that juries do not go much by what the Judge says in his "charge," but this ought never to be because the jury are unable to understand the Judge's language, or because the Judge is unable to lay the case fully and clearly before the jury.

27. These remarks are based on experience of juries in the 24-Parganas. In Patna, in Hooghly, and in Kishnaghur. All remarks are not illustrated in all these places, but each place contributes its quota to the criticisms advanced and the suggestions made.

Nos. 49–50. From C. B. GARRETT, Esq., District and Sessions Judge of the 24-Parganas, to the Chief Secretary to the Government of Bengal, Judicial Department,—No. 763, dated the 9th August 1890.

Referring to Judicial Circular No. J 6 $\frac{T}{2}$ 2 of the 23rd June last, I have the honour to report that I have not had any experience of juries since 1885, but between 1872 and 1885 I

served in every jury district in Bengal, except Nadia and Cuttack, having been Judge of Dacca, Murshidabad, Patna and Hooghly, and Additional Judge of the 24-Parganas and Hooghly.

I am bound to say that the result of my experience is that the jury system is on the whole a failure. No one can doubt the immense benefit that trial by jury has been to England, yet even there the system seems somewhat to have past the time appointed. I believe there are few persons who, if innocent, would not prefer being tried by a single impartial and experienced Judge, or who, if guilty, would not clamour for the inestimable privilege of being judged by twelve honest men in a box. Because trial by jury has done a great work in England, the authors of the Criminal Procedure Code probably thought it would do an equally great work in India, and, therefore transplanted it to India. But, as we all know, all plants transplanted to an alien country do not thrive there, and some become a mere fantastic caricature of what they are in their native soil.

Now there is a very essential difference in respect of the administration of criminal law in England and India. In England we are, on the whole, a homogenous nation; we all approve, on the whole, our system of criminal law. The jury sympathise with the law which is administered in our criminal courts; they have confidence in the presiding Judge, and last, and not least, being jurymen, they are content to be jurymen only to find facts and to leave everything else in the hands of the Judge.

Now in India all these conditions are reversed. We are Western foreigners, trying to permeate Orientals with ideas in many respects unsympathetic to them. However certain we may be, with our wider knowledge, of the superiority of those ideas, it cannot be said that the mass of Indians are as yet convinced of this fact, and no reasonable person, I think, would venture to assert that in this end of the century these ideas have penetrated much below the surface in India generally. Therefore, instead of our Criminal Code being sympathetic to the Indians generally, I believe it is on the whole unsympathetic. They have therefore little or no confidence in the presiding Judge, not because they believe that he will convict unjustly, but because they believe that, given a conviction, he will often award a punishment very different to what they would have awarded. Is it wonderful that, under these circumstances, Indian jurors constitute themselves Judges as well as jurymen, and that in many cases, with an absolute disregard of honour and propriety, they convict prisoners under sections not carrying a larger punishment than they think should be awarded; and sometimes, I suspect, if they think that the offence should not be punished at all, they go the length of acquitting them altogether.

Now I presume that it is our desire that, on the whole, India should be governed on Western and not on Indian principles, and hence I think that a system by which the criminal law is administered, not on Western, but on Indian lines, can never work satisfactorily in the opinion of the Western rulers until that far-off millennium arrives when Western ideas and civilization shall have thoroughly percolated all India.

I regard this therefore as one reason why the jury system is not, and is never likely to be, satisfactory to us in India.

Another general reason why the jury system works unsatisfactorily, I think, in India is the want of intelligence of the great majority of jurors. They are for the most part persons of very moderate education; they have little practice in drawing inferences; they get utterly confused by the lengthy cross-examinations of the witnesses and the voluble harangues of the pleaders. No doubt this obtains to some extent also in England. You have stupid jurymen there, and you have counsel who do their best to confound them. But on the whole, I think the average English juryman is superior to the average Indian juryman, and is more on a par with the counsel; and, moreover, an Englishman, when he gets hold of an idea or a belief, sticks tenaciously to it, whereas it is unfortunately a failing of the Indian character that the average Indian may be talked into or out of any belief, provided he be only talked at enough. Moreover, in England the Judge's summing up, which is heard with attention, goes a great way to remove any false impressions which the eloquence of the defendant's counsel may have created in the minds of the jury. While in India, the summing up of a Sessions Judge is with the majority of the juries, of very little efficacy.

This arises no doubt from the fact that few Sessions Judges have had any practice in public speaking, and have in many cases to address persons in a language which they speak and pronounce imperfectly.

This, therefore, is a second reason why I think the verdicts of the jury in this country are unsatisfactory, even when it cannot be supposed that the law which they are called on to administer is particularly unsympathetic. No doubt, however, one may hope that by degrees the qualifications of jurors will improve.

I come now to consider a fact noticed in the conclusion of the second paragraph of the Government of India's letter—that is, the great reluctance of native jurymen to convict in cases where there is any possibility of a capital sentence being passed. Mr. Beveridge seems to trace this characteristic to the good nature of the Indian jurymen—a view to which I cannot very much subscribe. I trace it to a more complex feeling. I trace it first to a morbid dread of responsibility, joined with a very much lower estimation of the sacredness of human life than that which prevails among Englishmen. There is no doubt that an Indian feels a morbid and almost superstitious dread of having anything to do with a capital sentence, and therefore he comes to the conclusion that he will in such cases reject any evidence except evidence of so extremely clear a character as can seldom be obtained. On the other hand, he does not recognize, equally with an European, the guilt of homicide and the absolute necessity of expiating blood by blood. It may seem at first that the reasons I have given are contradictory of each other, but rightly considered I do not think they are so. A morbid superstitious dread of being in any way connected with taking life seems to me quite compatible with a very imperfect idea of the sacredness of human life. This is the feeling which prompts a man to spare a noxious reptile or to refrain from killing an animal when old age or sickness have made its life a burthen to it. Such feelings appear to me quite consistent with a secret feeling that after all we must all die, and are as water spilt upon the ground that cannot be gathered again, and therefore that there is no reason why homicide should be expiated by taking another life.

That this last was the attitude of nearly all antiquity towards homicide is plain enough from the history of Greece and Rome, and I believe that the reluctance of Indian jurymen to convict in cases where a capital sentence may be passed arises from a mixture of these sentiments—partly from a superstitious dread of the responsibility of taking life, and partly from a feeling that it is not necessary to expiate murder by the death of the murderer.

Having now given my reasons for considering that, on the whole, the jury system is a failure in India of to-day it remains to consider what improvements are called for in its application. Of course the first remedy which suggests itself is its abolition, except in that class of cases to which it seems to be confined in the Madras Presidency, and in which no doubt it does well enough—sometimes, I have thought, a little too well. But this would be called a very retrograde measure; it would raise a terrible clamour, and I do not think the gain would repay the clamour it would raise.

No doubt the jury system will never be extended to districts in which it does not now obtain. I do not see that in districts in which it now obtains it could possibly be done away with, except perhaps—and I say this with much hesitation—in cases in which a Sessions Judge thought on the depositions that it was absolutely clear that, if these depositions were believed, there ought to be a capital sentence. The only other remedy I can suggest is the Legislature arming the High Courts with wider powers to deal with improper verdicts than, be it said with all respect, the Honourable Courts believe themselves at present to possess. Many Judges seem to think they can at present interfere with no verdict unless it is absolutely perverse. I would submit that, considering what Indian juries are, as to which everybody is agreed, that the High Court should not throw a glamour round them, but interfere in cases where the verdict is seriously against the weight of evidence given, and the reasonable inferences to be drawn from that evidence.

And I must say that I agree with Mr. Beveridge over a very heterodox suggestion that he makes, *viz.*, that when a Judge disapproves a verdict, he should be allowed to ask the jury the reason for their verdict. The enquiry might show that their reasons were good, and founded on solid sense and a proper appreciation of the case: on the other hand, it might show that the reasons for the verdict were absolutely unsound. Given the position that it is even right to interfere with the verdict of a jury, I cannot see why it should be wrong to ask the people who give the verdict why they did so.

From H. BEVERIDGE, Esq., Additional Sessions Judge of the 24-Parganas, to the District Judge of the 24-Parganas,—No. 252, dated the 9th July 1890.

I have the honour to submit the report called for by your memorandum No. 654 of the 4th instant.

2. I have had experience of trial by jury for ten years, first at Patna and afterwards at Alipore and Howrah, and the conclusion that I have formed on the subject is that trial by jury is an unsatisfactory system, and that it leads to the ecape of many criminals. The test of a system is its ability to deal with difficult or exceptional cases. The majority of criminal

cases are simple, and criminals are for the most part poor men and unable to engage barristers and pleaders. In such cases it is perhaps not very easy for a court to go wrong, and they are adequately dealt with by juries. But whenever a case is a difficult or intricate one, when it depends on circumstantial evidence, or when the accused can employ counsel, the jury are, generally speaking, of little assistance. They are not practised in drawing inferences, and they get bewildered by the endless cross-examinations and by the length and number of the speeches addressed to them. They are apt, too, to get terrified by the impassioned appeals made to them not to convict gentlemen or one of their countrymen of an offence for which the Judge can sentence to death or transportation for life. The Bengali is certainly as a rule a good natured man. He is more accessible to arguments *ad misericordiam* than are numbers of robuster nations, and he is also perhaps more of a sceptic. As he has not seen the crime committed, and as he does not feel as certain of the prisoner's guilt as of his own existence, he yields to the prayer of the prisoner's pleader and gives the accused the benefit of the doubt.

3. If, then, the jury system is to be considered merely on its merits as a means for the repression of crime, my unhesitating opinion is that it is a failure and should be done away with. But if it is to be considered also as a political institution and as a means of educating the people and interesting them in the subject of crimes, then there is a good deal to be said for the retention of the system. I almost doubt, too, if the question can be considered as still an open one. Though jurymen intensely dislike having to serve, and though they are often put to great trouble and even expense (for they are made to come from all parts of the district, and have often to undertake journeys of two or three days), yet the educated classes regard, or affect to regard, trial by jury as a bulwark of liberty. It must be admitted, too, that trial by jury tends to mitigate the very natural feeling of repugnance as to being tried in court presided over by foreigners. I believe that if all the Sessions Judges were natives, trial by jury would be dropped by acclamation; but so long as this is not the case, I do not think that we can abolish juries in the districts where they are in use. If this is to be done, it can only be by a gradual ripening of public opinion. If the English people should find out, as perhaps some day they will, that the jury system is as unsatisfactory in criminal cases as it is in civil, then the Bengalis may do so likewise.

4. Juries oftener go wrong in culpable homicide cases than in cases of offences against property. But I do not think it would be practicable to restrict their functions to trials for dacoity and the like. This would be too much of a *reductio ad absurdum*. For if juries were pronounced incompetent to try cases of offences against the person, it could scarcely be maintained that they were competent to try offences against property. If the jury system is to be retained I am rather in favour of extending than of limiting the jurisdiction. That is, I would allow juries to try offences against the coinage and offences against marriage. It is inconsistent not to allow them to try coiners while they are allowed to try forgers of currency notes, and I think that juries are peculiarly well qualified to try marriage cases.

5. If trial by jury is to be maintained, then the improvements I would suggest are that provision should be made for special juries, as is already the case in the presidency towns (section 276 of the Code), and for paying jurymen their travelling expenses. I would also fix some reasonable limits to the liablity to serve, and not leave them conterminous with the district, as they are at present. The result of present arrangements is that in the 24-Parganas jurymen have to come from Basirhat and from beyond Diamond Harbour.

6. It would be an advantage, and tend to bring the two races together, if Europeans and natives were to serve together on juries; but in the mofussil this is impracticable, as the European generally pleads ignorance of the language. I think this difficulty might in many cases be got over if clause (*d*) of section 278 were altered so as to include interpretation by the Judge or brother-jurymen. We have no regular interpreters in our Court, and I do not recommend their introduction. I think, too, that inducements should be held out to non-official Europeans to learn the language and so qualify themselves for serving on juries. For instance, rewards might be given, and they might even have their income-tax remitted if they regularly served as jurymen.

7. I would also suggest that the Judge be empowered to ask the jury the reasons for their verdict. The present system of references under section 307 is very unsatisfactory. It is not fair either to the jury or the prisoner. The Judge does not know what has led the jury to return the verdict of which he disapproves, and can only make guesses on the subject, and the jury have no means of defending or explaining their verdict. There should also be some change as regards the record of the Judge's charge. Shorthand writers should be attached to the Court, and the Judge should not be compelled to recount all the facts of the case to the jury. At present he does this, not for the information of the jury, in whose minds the details are fresh, but because he knows that the case will probably be appealed, and

that the High Court will want a statement of the facts. Provisions might be made for the Judge giving this in a separate note whenever a case is appealed.

8. In conclusion, I beg leave to quote some remarks which I lately published on the subject of trial by jury. I venture to do this because I should only repeat myself if I went again over the same ground.

"The question of trial by jury is far too difficult and important to be treated of in this paper. I shall only say that in my humble opinion trial by jury rests on the mistaken notion that the weighing of evidence is not an art, and that any fairly educated man can decide on a witness's credibility or on the value of a piece of circumstantial evidence as well as the most experienced criminal Judge. If this is so, why are juries not more used in civil cases, and why do suitors in England so generally abstain from asking for a jury? In most civil cases the points at issue are as purely questions of fact as they are in criminal cases. Men do not take the "average layman" view in other matters. Much of practical life consists in drawing inferences, and no one who has to draw a particular kind of inference for the first time thinks that he is as likely to be right as one who has been drawing such inferences all his life. On the contrary, the maxim is greatly favoured that every one should be believed in his own art. The sailor infers from certain phenomena that there will be a storm, the doctor infers from his patient's symptoms what his disease is, and the average layman who stands by and also observes the phenomena never dreams of putting his opinion against that of the skilled observer. In criminal matters, however, the opinion seems strongly held that any man can decide if a witness is speaking the truth, and draw correct inferences from facts. And it is to this idea that we owe such outbreaks of public folly as the agitators about the Amethurst and Maybrick cases.

"The jury system is admired by some because they regard it as a bulwark of public liberty. This view is rather out of place in India at present, as political and quasi-political cases are excepted from trial by jury. Juries do not even try cases of defamatory libels in newspapers or cases of coining. I may add that they do not try offences against marriage, though one would think native juries peculiarly qualified to try such cases.

"Those, however, who praise the jury system for protecting life and liberty seem to forget some of the worst cases of injustice recorded in history were jury trials. It was juries who comdemned the accused in the Popish Plots and other infamous State trials in Charles II's time. It was jurymen who gave the verdicts in the Bloody Assizes. If it be said that in these cases the Judge, and not the jury, was to blame, still what becomes of the bulwark?"

Nos 51 & 52. From J. C. VEASEY, Esq., Inspector-General of Police, to the Chief Secretary to the Government of Bengal,—No. 11832, dated the 2nd September 1890.

As desired by Mr. Lyon's Circular No. J. 6 $\frac{T}{2}$ 2 of 23rd June, I have the honour to submit a report on the points raised by the Government of India in their No. 742 of 31st May in connection with the working of the jury system. The question is not one with which I have personally been brought at all closely in contact, and such opinions as I have been able to form are based on what I have seen of the results of trials or on information given me by police officers.

2. It seems to be a subject of general complaint that, in the absence of any qualifying test, jurors are often persons more or less unfit to discharge the duties imposed upon them, and are thus unable to appreciate their responsibility. As now-a-days many or most Sessions trials last for more than a day, the jury can be easily got at by interested outsiders, and a case is mentioned in which the verdict had been arranged and was openly talked about two or three days before the trial ended.

3. It may be said that as the law requires an unreasonable verdict to be referred, it is not, after all, an obstacle to justice; but the High Court have shown themselves so unwilling to interfere with verdicts that Judges do not care to court a rebuff which damages their own authority, and in practice these references are seldom made. It is only, too, in very exceptional circumstances that an appeal can be preferred with any chance of success, and verdicts therefore, possess a degree of finality which is certainly not due to their own merits.

4. The reluctance shown by juries to convict in murder cases is a matter of general notoriety, but the common impression that this is in a way made up for by their willingness to do their duty in cases of offences against property is not, I believe, well founded. If, as is generally understood to be the fact, many Native Deputy Magistrates are afraid of the consequences of convicting a *badmash*, what are we to expect from a juror? and where private feeling opposes public duty the former is tolerably certain to prevail. Trial by jury may have

its advantages in cases of defamation and offences against marriage, but it is not worth continuing under such restrictions, and I would do away with it a as useless exotic.

5. The inherent vice of our mofussil jurors is their own weakness—their amenability to outside influence, and this gives additional importance to a subject which has not hitherto attracted the attention it deserves—I mean the personality of the presiding Judge. It is difficult to illustrate this without mentioning names, but an instance is afforded by Burdwan in 1877-80 under Mr. C. D. Field, when judicial vigour entirely neutralized the influences brought to bear from opposing quarters. The testimony of an acute observer, Mr. H. N. Harris, who was then District Superintendent, is that he acnnot remember a single occasion on which the jury ignored the Judge's directions, and I much doubt if there is any district in which the same thing could be said now. Yet in Patna a rise in the percentage of convictions from 38·6 in 1888 to 68·9 in 1889 was undoubtedly due to a change of Judges.

6. The annexed table, the figures for which have been extracted from the annual reports of this Department, should be found interesting. It shows that for the first seven years of the decade 1880-89 the average percentage of convictions in jury districts never fell below 50 per cent., and was only thrice less than the average for the Lower Provinces generally. But in 1887 a change set in, and the fall which commenced then has been rapid and continuous, Howrah and Patna being the only exceptions to a very bad return all round. Our rising Judges may be better lawyers than their predecessors, but their opinions evidently have less weight with the half-educated persons they attempt to guide. The reason for this is no doubt to be found in their very limited executive experience, and it affords an additional reason, in my opinion, for recommending that trial by jury should be discontinued.

Result of Sessions Trials.

Percentage of convictions for the Lower Provinces.

1880.	1881.	1882.	1883.	1884.	1885.	1886.	1887.	1888.	1889.
60·6	60·2	59·1	57·6	59·3	56·3	57·8	56·0	51·7	49·1

For each jury district.

Jury district.	1880.		1881.		1882.		1883.		1884.		1885.		1886.		1887.		1888.		1889.	
	Number of cases tried.	Percentage of convictions.	Number of cases tried.	Percentage of convictions.	Number of cases tried.	Percentage of convictions.	Number of cases tried.	Percentage of convictions.	Number of cases tried.	Percentage of convictions.	Number of cases tried.	Percentage of convictions.	Number of cases tried.	Percentage of convictions.	Number of cases tried.	Percentage of convictions.	Number of cases tried.	Percentage of convictions.	Number of cases tried.	Percentage of convictions.
Hooghly	75	82·7	79	55·7	78	56·5	36	41·7	28	25·0	64	45·3	39	59·0	42	54·8	22	45·4	70	18·5
Howrah	64	67·2	31	77·5	43	53·5	31	48·4	32	65·7	20	75·0	31	80·7	36	58·3	13	69·2	43	60·4
24-Parganas	125	50·4	101	41·6	147	62·0	93	61·3	58	67·3	46	65·3	87	81·8	66	54·5	105	50·4	160	43·7
Murshidabad	71	36·7	77	50·7	60	35·0	53	64·2	67	41·8	111	62·2	54	48·2	23	21·7	21	28·5	29	41·3
Patna	88	66·0	110	38·2	79	39·3	45	68·9	62	80·7	101	42·6	69	60·9	78	57·7	132	38·6	58	68·9
Burdwan	25	64·0	31	54·9	55	49·1	55	74·6	34	64·8	46	6·09	16	31·3	36	30·5	12	50·0	27	22·2
Dacca	128	63·3	79	74·7	71	53·4	108	52·8	97	48·5	93	44·1	85	62·4	80	68·7	79	31·6	56	37·5
Nuddea	86	69·8	61	60·0	87	74·8	40	60·0	52	48·1	25	64·0	83	38·4	55	34·5	52	53·2	42	30·9
Average	82·7	62·5	71·1	56·6	7·75	52·9	57 6	58·9	53·7	55·2	63·2	57·4	58·0	57·8	52·0	47·6	54·5	45·8	60·6	40·4

From—D. CAMERON, Esq., Officiating Sessions Judge of Dacca, to the Chief Secretary to the Government of Bengal,—No. 1016, dated the 2nd September 1890. No. 53.

In reply to your Circular No. J. 6 $\frac{T}{2}$ 2, dated 23rd June last, calling for a report on the points raised in the Government of India letter No. 742, dated 31st May, therewith received, on the working of the jury system, I have the honour to state that my experience of the system is limited to 21 trials held during the past few months in the single district of Dacca. I am not thus in a position to give an opinion on the subject based on experience gained in any other district.

2. My personal experience of the working of the system in Dacca has been so far favourable. The jury convicted in 15 cases out of 21, their verdicts were as a general rule in accordance with the directions given them, and in no case out of the few in which I found occasion to differ from them did I think it necessary for the ends of justice to make a reference to the High Court. Even in Dacca, however, where the jury list is, I believe, larger and the jurors probably more intelligent than in any district in Bengal, with the exception of the 24-Parganas and Hooghly, the results of the trials by jury have not hitherto been satisfactory. In the three years, 1887, 1888, 1889, the Judge disagreed, either wholly or partially, with one verdict out of every three delivered by the juries. Out of 124 cases tried, 12 were referred to the High Court under section 307, the Criminal Procedure Code, with the result that the High Court interfered with the verdict of the jury in seven cases. Three of the latter were references in connection with verdicts of acquittal in murder cases, and in two of these cases the High Court sentenced the accused to death and in the third to transportation for life. It cannot, therefore, be said that the jury system has hitherto been very successful in Dacca, at any rate in dealing with cases of murder.

3. As to the merits of the system as a means for the repression of crime, I do not think anything favourable can be said. The jury districts in Bengal nearly always show a smaller percentage of convictions to trials than those districts in which trial by jury is not in force. It is notorious that native juries generally are reluctant to convict in cases of murder and culpable homicide not amounting to murder, even when the evidence against the accused is perfectly clear. I think, therefore, that some improvement in the application of the system is urgently called for. I never could see why a jury should be thought more capable of arriving at a just conclusion on the facts of a case than a fairly experienced Judge sitting with assessors; but if it be deemed too sweeping a measure to do away with the system entirely, I would recommend that at least cases of murder and culpable homicide, if not, indeed, all cases under Chapter XVI, Indian Penal Code, should be wholly withdrawn from the cognizance of juries in the mofussil.

From J. CRAWFURD, Esq., Officiating Sessions Judge of Hooghly, to the Chief Secretary to the Government of Bengal,—No. 1334, dated the 23rd September 1890. Nos. 54-57.

In compliance with the request contained in your Judicial Circular No. J. 6 $\frac{T}{2}$ 2 of 23rd June last, and subsequent reminder, I have the honour to report as follows on the working of the jury system, so far as I have had experience of it—that is, in the districts of Nuddea, Patna and Hooghly.

2. Having only recently joined this district, I have asked for and obtained the opinion of the Government Prosecutor, an officer of great experience, and I have also been favoured with an expression of the opinion of the pleaders and mukhtears practising at head-quarters. All these reports are forwarded herewith in original.

3. In answer to the question put, I have to say that I am not aware that the jury system has, nor do I think that it is generally considered to have, any merits as a means for the repression of crime. In my experience, cases rarely occur in which a jury convicts contrary to the expressed opinion of the Judge. The jury system is regarded as, and undoubtedly is, a very valuable safeguard to the liberty of the subject. It is valued by the people generally in those districts where it is in force as providing a tribunal in full sympathy with their habits and opinions. It is valued by the criminal classes as affording them certain chance of escape from punishment, which they might not have without it. It is valued by the Bar as affording an opportunity for the display of forensic eloquence, which might otherwise miss its mark. It is valued by the Judge as affording him assistance in ascertaining the facts with some degree of certainty in large classes of cases. It is disliked by executive authorities, as they distrust it.

4. The jury system, like all other human institutions, has its defects, and must be taken the good with the evil. In my opinion, the good preponderates. The evil is chiefly a reflection of the evils incident to the existing state of native society, and may be expected to diminish as that improves.

5. It is easy to find fault with the system by pointing to cases in which failures of justice have occurred, but it is not easy to say how far in each case the jury system was responsible for what occurred. I have differed from the verdicts given in not a few cases, but seldom, till quite recently, have I succeeded in persuading the High Court that the verdict of the jury was wrong.

6. I have not myself the least hesitation in affirming in consonance with the views expressed in the reports forwarded, that a great many cases break down in the Court of Session from causes for which the jury is in no way responsible. The careless, inefficient manner in which commitments are dealt with, now that the European Joint-Magistrate is practically a thing of the past, is too patent an evil to escape comment. The delay, sometimes unavoidable, often the contrary, with which trials are held, necessarily leads to the weakening, if not to the entire destruction, of the evidence. The general bad repute of the police, the uncontrolled manner in which investigations are held by them, the obviously doubtful character of the evidence produced by them in many cases, the delays and the opportunties thus given to them for bringing pressure to bear on both the witnesses and the accused, all tend to produce on the minds of the jurors generally a rooted distrust of the prosecution, which they cannot be expected to shake off at the outset of any trial.

7. There is also in the minds of the jurors a strong feeling of sympathy with the accused merely as such. They regard him as being subject to all the weight of official pressure brought to obtain a conviction. They seem to consider themselves bound to stand between him and punishment, if there be any plausible reason for doing so. The real reason of this I take to be that they are not in sympathy with our penal system, which appears to them to be unduly harsh and inelastic. Many a wrong verdict, I believe, is given simply because the jury consider that the prisoner has already suffered sufficiently for his crime before the trial, or because they are afraid that a verdict of guilty would be followed by a punishment out of all proportion to the offence.

8. A principle, which is too often lost sight of in Indian administration, is that it is the certainty of punishment and not the severity of punishment, which is the best deterrent from crime. It is too often sought to supplement the defects of the machinery of justice by imposing sentences of great severity. Such proceedings defeat their own object. By awakening sympathy with the criminal and distrust of the Judge in the minds of the jury, they lead to acquittals or to the minimising of the guilt of the accused. There is no doubt that in the Criminal Code the punishments awarded for certain offences are far beyond anything sanctioned by native opinion. In particular, I believe that capital punishment for any offence, however heinous, is looked on with disfavour. I myself feel no doubt that in some very important cases there has been the real, though perhaps the unconscious, motive for acquittal.

9. In no case in my experience has there been any allegation of corruption or of wilful misconduct against a jury. In one important case it was represented to me that the jury had acted through fear of the consequences to themselves if they convicted. I referred that case to the High Court, however, and it was held by it that the verdict of the jury was the right one.

10. Among all classes there is a strong dislike to sitting on the jury, and every device is resorted to for the purpose of escaping what is considered as a burdensome duty. When once empanelled, however, I have usually found that the jurors followed the case with interest, and were closely attentive to the evidence and to the arguments of the pleaders on either side. I have not found the same attention to the summing up of the Judge, and have more than once had reason to believe that the minds of the jury were made up before it was begun.

11. I think it must be admitted that the defects to which I have alluded are defects incident to the jury system wherever it has been introduced, in its earlier stages at least. The juries in England and Scotland in last century, before the repeal of the inhuman provisions of the old Penal Code, were more prone to acquit than they are now, and that for a very obvious reason. On the other hand, where political fellings run high, justice is seldom obtainable, even now, from an English jury. And I think it much to the credit of Indian juries that except in respect to the sacred caste, class feelings seem so little to bias them.

12. It seems to me that it would be as unreasonable to do away with the jury system in India, because it does not come up to unreasonable expectations, as it would be to uproot a young tree because it did not grow so quickly as its planter desired, instead of cultivating, training, and supporting it.

13. Amendments are, I think, necessary, but not so much in the law as in the practice under the law. In the first place, I agree with the opinions expressed in the reports forwarded that the preparation of the jury lists leaves much to be desired. In particular, I am of opinion that there should be a special jury list for the trial of the most important and difficult cases, as

there is in Calcutta. Those on this list should be exempted from service as petty jurors. Many of those now exempted from service as jurors altogether, and especially Honorary Magistrates, should be bound to serve as special jurors.

14. Special arrangements should be made executively, at least once every five years, for the preparation of the jury list afresh. Situated as I am at present here, I have no sufficient knowledge of the place or of the people, and I have no establishment to enable me to draw up a list in the way that it ought to be done. The rich and influential have means of keeping their names out of the lists, which are now usually based on information received from the police. The Collector, through his ordinary staff, might do a good deal to mend matters, but time given to such a matter is grudged as being taken away from their more legitimate duties.

15. Now that jurors may be summoned from distant parts of the district, it is all the more necessary that the duty of attending court should be rendered less burdensome and less disagreeable than it is. I consider that the money would be well spent if the Government were to allow the jurors their travelling expenses, and a daily allowance when they are attending court. Proper accommodation should be provided for them when in attendance. Every Court of Session should have a jury room, properly furnished, not only to meet the personal convenience of the jurors, but as due to them in respect to their position.

16. In conclusion, I desire to say that I consider that it is essential to the proper working of the jury system, that on references being made under section 307, Criminal Procedure Code, cases should be gone into by the High Court on their merits, and that proper weight should be given to the opinion of the Sessions Judge, no less than to that of the jury, which may be governed by the voice of a single, ill-educated, inexperienced, or a prejudiced juror.

From the Public Prosecutor of Hooghly, to the District Judge of Hooghly,—No. 74, dated the 15th July 1890.

With reference to your memorandum No. 842 of the 5th instant, inviting my opinion on the points raised in paragraph 2 of the letter from Government of India, regarding the working of the jury system in the Lower Provinces, I have the honour to submit the following.

1. By a Notification dated 7th January 1862, *Calcutta Gazette*, 1862, page 87, it was ordered that trial by jury should be held in the districts of 24-Parganas, Hooghly, Burdwan, Murshidabad, Nuddea, Patna, and Dacca of all offences, mentioned in the Penal Code as defined in Chapter 8, relating to offences against public tranquility, Chapter 11, to false evidence and offence against public justice, Chapter 16, offences affecting the human body and offences against life, Chapter 17, to offences against property.

2. By a second Notification dated 27th May 1862, *Calcutta Gazette*, 1862, page 2041, the trial by jury was extended to the said districts to offences as defined in Chapter 18 of the Penal Code, *viz.*, offences relating to documents and to trade or property marks.

3. By a further Notification dated the 13th October 1862, *Calcutta Gazette*, 1862, page 3416, it was ordered that abetments of, and attempts to commit any of the above-mentioned offences in the districts mentioned above, should be tried by jury. Thus it is found that trial by jury prevails in 7 out of 46 districts of Bengal.

4. Of the several chapters of the Indian Penal Code above referred to, the police have to initiate proceedings in offences under Chapters 8, 16 and 17, and they have very little to do in offences under Chapters 11 and 18.

The Government letter referred to raises three questions for consideration—

1st.—How the system of trial by jury has worked in the Lower Provinces.

2nd.—What opinion is entertained as to its merits as a means for the repression of crime.

3rd.—What improvements, if any, are called for in its application.

As regards the first question, I am of opinion that the trial by jury has worked well as regards offences under Chapters 11 and 18. The reason probably is that in such offences the jury have not only to deal with oral, but generally with some documentary evidence, and they have something tangible than oral evidence to proceed upon. Such cases, besides, are shaped by the parties interested, and they seem to think that they tread on firm ground.

5. As regards offences against property, Chapter 17, I am of opinion that when in cases of theft, robbery or dacoity, the stolen property has been found out and properly identified, and the ownership established, and even in cases when no property has been found out, but the oral evidence is satisfactory, the verdict of jurors has been generally satisfactory and correct. It has been said that in Bengal native jurors are too prone to convict dacoits, previously convicted thieves, etc., but I do not agree with this view. They generally act upon the evidence; but if

they find anything suspicious in the proceedings of the police, or that the evidence is against probabilities, they bring in a verdict of not guilty.

6. In cases connected with public tranquillity, specially in cases of rioting or affray, the verdicts of the jury in the majority of cases are not bad; but in cases of rioting, if the commission of the offence is proved, the verdict of the jury depends upon the strength or weakness of the evidence on the identification of accused persons.

7. It is only in cases of homicide that the jurors have in some cases shown an inclination to acquit, and did acquit, where a Judge accustomed to weigh evidence, specially the evidence of Indian witnesses, would have probably convicted the accused; and I am aware of cases also when they have erroneously convicted where they should have acquitted, and in such cases of erroneous convictions the High Court had set aside the convictions by the jury, but the preponderance is more for acquittal than for conviction.

8. On the whole, I am of opinion that the working of trial by jury in offences other than those of homicide is satisfactory, and as regards offences of homicide it has not worked so well, but I must state that I share the opinion of those gentlemen who think that the majority of ordinary native jurors show a reluctance to convict when there is any possibility of a capital sentence being passed; but I also say that I have had opportunities to observe that when the jurors are men of education and of respectable position in life, they do not shrink from the discharge of their duties if the facts of the case justify a conviction, and here I may add that the inclination of the ordinary native jury is not so much to aquit as to reduce the offences from murder to culpable homicide and from culpable homicide to grievous hurt or to simple hurt.

9. It cannot be denied that in some cases of homicide the findings of the jury have been unsatisfactory; but the causes of such failures can be remedied, and they are not far to seek and I shall touch upon this subject in the third question raised in the Government letter. I take leave, however, to observe that the failures are not those of the system of trial by jury, but the result of improper selection of jurors, and incomplete and perfunctory investigation in the preliminary stages of the cases.

10. The law has not made the acquittals or convictions by jurors final. The Sessions Judge has the power under section 307 of the Criminal Procedure Code to send up cases to the High Court, when he completely differs from the verdict of the jury, and he considers it necessary for the ends of justice that a reference should be made, but practically how many references are made? Such references are few. I have on several occasions applied to the Sessions Judges to make such references, but except in a very few instances the Sessions Judges decline to do so, and this chiefly on the ground that the case is not so complete as would justify a reference.

The proportion then of wrong acquittals in homicide cases to the number of cases in which accused are acquitted on such charges depends upon the number of successful references by the Judge to the number of acquittals by the jury; and this information, so far as this district is concerned, can be gathered from your office; but I presume the proportion is very small, and this fact shows that miscarriage of justice is not wholly to be attributed to the jury.

The other check upon erroneous acquittals is an appeal by Government, but in cases triable by a jury an appeal can be made under section 418 of the Criminal Procedure Code only on a question of law or a misdirection by the Judge. An appeal by Government does not touch the incompetency of the jurors but of the Judge, and as a matter of fact there has been no appeal by Government in this district for many years.

11. In calculating, again, the verdicts of native jurors in offences against life, you should take into consideration the number of commitments made by Magistrates wherein deaths are caused from ruptures of the spleen or from accidental circumstances, and when either no intention to cause death exists, or when the accused could not have known that there was a likelihood of death being caused. Almost in every Sessions sitting we have one or two cases of this kind, but a strong Magistrate would in such cases convict the accused of their real offences instead of sending them up on higher charges to the Sessions.

The result in Fuller's case and the circulars on the subject might induce the Magistrates to commit such cases to the Sessions, but at any rate the failure of graver charges in such cases cannot be attributed to the jury.

As regards the second point, it is difficult to give a decided opinion on this subject.

12. Trial by jury is considered by the people of Bengal the most popular and impressive branch of the administration of justice. Every one, of whatever creed or colour, is interested in it. No one could ever have witnessed a trial by jury and its proceedings without being impressed with its solemnity. It is surrounded by solemnities which create an awe and respect for the administration of justice. The accused are afraid of a commitment to the Sessions, but

those who are erroneously charged with at the same time prefer a commitment to the Sessions than a trial by Magistrate, partly because they think they may escape from the ignorance of the jury, but mostly because they think that in a trial by jury their cases will be tried under the directions of a trained Judge, accustomed to weigh evidence, and they can appeal to the experience of their own countrymen, who have an intimate knowledge of the manners and customs of the people. Whatever may be the mode of trial, either by Judge or by jury, prosecutions are the great safeguards of society. If the criminal classes did not realise that, notwithstanding the shortcomings of the jury in some cases, a certain retribution awaited their wrong doing, crime would have gone on increasing since the introduction of the jury trial for more than a quarter of a century.

13. In considering this question whether trial by jury, as to its merits as a means for the repression of crime, is desirable, one must take into consideration how the cases are initiated and completed by the police and managed by, and conducted before, the committing officer and sent up to the jury for trial.

In this connection I must say that the cases which grievously fail before the jury are badly sent up by the police, and some of them are badly managed by the committing officers; and I am bound to state my opinion that real crime whether of homicide or of other offences properly investigated by the police and intelligently enquired into by committing officers, very seldom go unpunished before an intelligent jury.

14. I do not mean to say that there has been no miscarriage of justice in properly investigated cases; but in such cases, specially in cases of homicide, the failure is to be traced to the selection of ignorant or prejudiced jurors, and in such cases it must be said that trial by jury has a contrary effect as to the repression of crime.

15. I now turn to the third question, *viz.*, what improvements, if any, are called for in its application.

The first point to which I should call your attention is the selection of the jury.

Section 319, Criminal Procedure Code, provides that all persons between the ages of 21 and 60 are liable to serve as jurors. I would raise the age from 25 to 60. In France jurors must be 30 years of age and in full possession of political and civil rights. Young men, just arriving at majority, have not that experience in this country which would enable them to be responsible for their verdicts in serious cases, and I have seen that young men simply sit in the jury box and take no intelligent interest in the trial.

16. The jury list should be carefully prepared. Section 321, Criminal Procedure Code, provides that the Sessions Judge and the Collector should prepare a list of jurors; but the Collectors and the Sessions Judges, from their position, know very few persons of the district, and constant changes in the *personnel* of these officers practically prevent them from knowing many persons, and these higher officers practically leave the preparation of the list to sub-inspectors, nazirs, or other subordinate officers. I would suggest that these officers should appoint a committee of respectable native gentlemen who have been long in the district, first, to prepare a list. A Deputy Magistrate and a Subordinate Judge or Munsif, who has been in the district for some time, the Chairman or Vice-Chairman of the Municipality and District Board, an experienced pleader, and one or two zemindars or Honorary Magistrates should form a committee, and after these gentlemen have prepared the list the Judge and the Magistrate shall examine and approve it. This, I think, would require no change in the law. In selecting the names of the jurors, their education, moral character, property and position in society should be looked to, and endeavour should be made to select jurors from all sections of the community. In England the qualifications for a common juror is that of being owner of a free-hold estate of £10 a year, or a lease-hold of £20, or being a house-holder rated at £20, or in Middlesex at £30. The qualifications of special jurors is the occupation of a house of £50 in large towns and £100 elsewhere, or being a banker or merchant or entitled to be called Esquire (33 and 34 Vict., Chapter 77, section 6). In the Jury list names of (1) *dalals* or touters of cases, (2) zemindar's *gomastas*, (3) men once charged with an offence before the Sessions Court, (4) persons who have no means of an honest livelihood and live upon the charities of others, should be excluded. The reason why I exclude the third class of persons is that men who were once in the dock in the Sessions Court generally cannot forget their old position in the same place, and they identify themselves with the accused.

17. In my opinion the provision of section 313, which applies to High Courts, should be extended to the mofussil courts, and a list of *common*, and a separate list of *special*, jurors should be made, and in the preparation of this latter list special regard should be had to the property, character and education of persons whose names are entered therein; and I may observe that if this provision is found necessary in Calcutta, I think the necessity is greater in the *mofussil*.

18. In my opinion, trial of homicide cases should be made exclusively triable by jurors whose names are to be found in the special jury list.

19. The next point to which I would advert is that the law as to peremptory challenges of jurors as made applicable to the High Court by the last clause of section 277, Criminal Procedure Code, should be extended to the *mofussil.*

The challenge as to array being an objection to the whole body of jurors summoned, as it prevails in England, need not be introduced here, as the jurors in this country are summoned by the court and not by the sheriff; but the accused, as well as the Crown, should be allowed an opportunity for an order that a certain number of jurors should stand by. A departmental rule should be made by the Magistrate that it would be the duty of some officer to give information to the Public Prosecutor as to what jurors should be objected to.

20. Considering the manner in which commitments are made upon imperfect investigations, I think it desirable that the Legislature should extend the provisions of section 273 of the Criminal Procedure Code to the *mofussil* Sessions Court.

The Sessions Judges should be authorized by making an entry to stay proceedings before the commencement of the trial whenever it appears to them in any case that any charge or portion of a charge is clearly unsustainable. This would prevent many acquittals, and may lead to future convictions.

On this point Sir James Stephen observes:—" It is by no means uncommon for offenders to be committed in cases in which the Judge sees, though the committing Magistrate did not, that a link in the chain of evidence is wanting, or that the evidence itself is of such a nature that the petty jury would be sure to acquit. In such cases it is usual to advise the grand jury to throw out the bill, and in this way open failures of justice are often prevented. This is specially common in the case of crimes of a disgusting nature imperfectly proved, the open trial of which is itself an evil and by no means a small one."

In my experience I have seen several cases in which this course, if adopted, would have prevented a failure of justice; but as the law now stands, a Sessions Judge must go through a trial unless the Public Prosecutor, with the consent of the Judge, withdraws from the prosecutions, and when he does so, the effect of withdrawal is an acquittal.

Another point to which I should call your attention is that the second clause of section 300 makes provision that no one should, without the leave of the Court, speak to or hold any communication with any member of such jury. This may hold good when the jury are sitting in the court-house and are engaged in the trial, but I think there should be a provision made that no one should speak to any member of the jury on any point or matter of the case which they are trying at any time in Court, in tiffin time, in the way or elsewhere, and I think there should be some penalty for such acts. I also think that the oath which is administered to the jurors should contain a clause that they should not talk about the case in which they sit to try an accused person with any one before they deliver their verdicts. Section 296 of the Criminal Procedure Code provides that the High Court may from time to time frame rules as to keeping the jury together during a trial lasting for more than one day. I am not aware whether any such rules have been framed, but this much I am aware, that in Hooghly the jury were never kept together in charge of an officer of the court in trials lasting for more than a day.

In my opinion in important trials the provisions of this section should be followed.

The next point to which I would call your attention is the perfunctory way in which the cases are investigated by the police, and in my humble opinion disastrous results in cases triable by the jury are owing in a great measure to the incompetency of the lower grade of police officers generally to thoroughly investigate cases, and especially cases of homicide and dacoities.

As matters now stand, the first enquiry is taken up either by a head constable or a sub-inspector. These officers are not sufficiently educated in the science of detection of crime, and they generally spoil the cases before any higher police officer reaches the place of occurrence. It can be assumed generally that if anything can be done in the detection of crime, it would be done within three or four days of the date of the commission of the crime. The officer who would take up such investigations should know something of law, and especially the rules of the law of evidence; and I may be allowed to say that I have observed in many cases a want in these officers of a patient study of facts and the circumstances connected with them, a want of mastery of details, and a sad want of perception of what is evidence from what is not, which lead to the failure of justice.

I admit that the difficulties in the way of detection of crime in Bengal are great. Whenever a homicide occurs, except in few instances, people do not assist the police. They keep themselves back, either from fear of the police, or from interest they take on account of the accused. The investigating officer is beset with difficulties, which in my opinion are beyond the abilities of the young police officers who generally conduct the first invesgtiation. It needs tact

and judgment to deal with a village full of rustics, each intent on deceiving the police to the best of his ability. I come, therefore, to the conclusion that the great improvement needed to ensure success in jury trial is the improvement in the class of officers who first take cognizance of important criminal cases.

The next point to which I would call your attention is the manner in which cases are prepared for the jury. A committing officer in my opinion should not send up a case simply because there is some evidence. The facts of the case should be carefully developed by legal evidence; he should examine the witnesses in detail, and see that the chain of evidence is complete, and that there is a high degree of probability of conviction before they send up a case.

I have often observed that many cases are sent up although the evidence is not complete, and on this point the police and the committing officer should remember that a committal on insufficient grounds leads to an acquittal, but a discharge by a Magistrate may lead to future convictions, if further evidence be forthcoming. It is true, as I have already stated, that in homicide cases the native jurors show an inclination to acquit or reduce the offences from a higher to a lower one, but I think it is equally true that the police officers generally show an inclination to send up cases upon weak or insufficient grounds, probably to clear off their files and show that they have done their portion of the work. The committing officer finds there is some evidence, but not the whole evidence, but probably he does not like to differ from the view of the investigating police officer, and he commits the case to the Sessions, thinking that the phrase *primâ facie* case includes cases where there is some evidence against the accused. The result of such commitment can be very well anticipated, and the incompetency of the jurors to decide offences of homicide cannot be judged from such instances.

The next point to which I shall call your attention is the manner in which prosecutions are conducted before the committing officers. On this head I am of opinion that in every homicide and other important cases a competent pleader should be engaged for the prosecution before the Magistrate. A head constable or court sub-inspector is absolutely incompetent to conduct prosecutions in serious cases. In every important case the accused employs counsel or a pleader, and the prosecution virtually goes unrepresented. The cases that come before the Sessions Court are based upon the police view of the case, not on the view of a lawyer, and loopholes and gaps are left which lead to failure of justice. The public prosecutor, remarks Sir James Stephen, has no other duties than those of an ordinary counsel for the Crown. He has nothing to do with getting up the case, and this branch of the subject is entirely left to the lower grades of ill-paid police officers, who had no training to conduct prosecutions.

If the cases on charges of homicide are better prepared, the safeguards provided by law against wrong acquittals by the Procedure Code are sufficient.

I may here take leave to state that the trial by jury is a success in Calcutta and other Presidency towns because—

(1) There is a police who knows how to detect crime.
(2) The committing officers are generally lawyers by profession.
(3) The Government Solicitor takes up the prosecution in important cases.
(4) The jurors who try the accused are generally gentlemen of education and position in society.

And I may in conclusion state that the improvements necessary are—

(1) Employment in the police force of competent detectives.
(2) Lawyers who have seen criminal practice should hold the preliminary enquiries.
(3) Competent pleader should conduct criminal prosecution before Magistrates in important cases.
(4) Gentlemen of education, respectability and position, should be selected as jurors.

From Babu KESHUB CHUNDER ROY, Secretary, Bar Association, Hooghly, to the Officiating Sessions Judge, Hooghly,—dated the 14th July 1890.

With reference to your memorandum No. 852, dated the 7th July 1890, forwarding copy of letter No. 742, dated the 31st May 1890, from the Government of India, regarding the working of the jury system, I have the honour to state that, in the opinion of the members of the Bar Association, Hooghly, the jury system has done good and useful work in places where it has been introduced. Indeed, the people appreciate its value and are in favour of it as a beneficial institution in the country. As a matter of fact it has been found that where the evidence is full, sufficient and satisfactory, the jurors have seldom failed to return a proper verdict. If in any instance there has been a failure of justice, or the result of the cases has not been so fair and satisfactory as would be expected, it has been owing either to a bad selection of jurors or

the careless and misdirected investigation by the police, and the perfunctory enquiry by the committing Magistrate; and sometimes also it has been due to a misdirection to the jury on the part of the presiding Judge, and not to any inherent defect in the system.

2. The reason not unoften urged against the jury, as referred to in the letter of Government under notice, with regard to the reluctance of a *native* juryman to convict when there is any possibility of a capital sentence being passed, is not, in the opinion of this Association, fair and well-founded.

3. The members would now crave leave to point out that the present practice of selecting jurors, without due regard to their education, social position and intelligence, is highly to be deprecated, as it tends in some measure to defeat the object which the jury system is intended to secure. But if greater care and discrimination were used in the matter, the members have no doubt that the evils complained of would be remedied, and the benefit of the jury system as a means for the repression of crimes fully realised.

4. To ensure, therefore, a more satisfactory working of the system it is absolutely necessary that a better and more efficient class of men should be selected ; in short, those only should be appointed to serve on the jury who, by their education, respectability, and intelligence are best fitted to discharge the onerous duties which they are called upon to perform.

5. With a view to a better selection of jurors, I am directed to suggest that it would be desirable to consult Chairmen of Municipalities and the District and Local Boards in the preparation of a list for the purpose.

From Babu SYAMA CHURN HALDAR, Mukhtear, Hooghly, to the District and Sessions Judge of Hooghly.

According to your honour's direction by memorandum No. 841, dated the 5th ultimo, I beg respectfully to communicate to your honour the opinion of the mukhtears practising in the criminal Courts of the Sudder station of this District on the subject alluded thereto, after holding a meeting.

The jury system has worked satisfactorily in this district.

The working of this system is in no way favouring the escape of criminals, but it does in a great way for the repression of crimes. It does substantial justice to cases, though we have observed in some cases that accused persons said to have made confessions in the lower Court are acquitted by the jurors. It occurs only in cases in which the accused persons retract their confession before the Sessions Court by pleading that their confessions were extorted from them by police by fear, force, and other unlawful means. In trying such cases the jurors, being aware of the unpopularity, and having a keen insight into the character of many of the police officers of this country cannot convict the accused persons. We have also observed that in some police cases accused persons are acquitted by the jurors on account of false evidence being adduced. For such acquittal the jury system is not to be blamed. The blame lies on police. The jury system is a great boon to the people of this country, and the desirability of its introduction in extension is beyond all question.

The jurors, being natives of the place and well acquainted with the habits, customs and manners, etc., of the people, are in a better position to weigh evidence, and, therefore, are the best judges of facts.

As regards its improvement, we are of opinion that if a little more care be taken in the selection and appointment of jurors, that is, if qualified and able persons only be selected and appointed, and some reformation in the police staff be made, the jury system would work more satisfactorily.

No. 58. From W. KEMBLE, Esq., Officiating Commissioner of the Patna Division, to the Chief Secretary to the Government of Bengal,—No. 589—G., dated the 24th September 1890.

I have the honour to submit the report called for in your No. J. 6 $\frac{1}{2}$2, dated 23rd June 1890, on the working of the jury system.

2. The only district in the division in which it is in force is Patna, which, owing to its size and importance, is the best suited of any for giving it a fair trial.

3. The general opinion, in which I concur, is that the system is not suited to this country. One of the best and most experienced Deputy Magistrates in this division, who is a man of good common sense and business habits, and who, I believe, enjoys the confidence of the native community amongst whom he works, writes as follows :—

The number of jurors is upwards of 700 (it has at the last revision been reduced to 400). They are not generally men of education or of liberal views. The system is not looked upon with favour. When a case is committed to the Sessions and jurors are appointed, endeavour is made on both sides to influence vulnerable jurors, and they are really influenced in some cases. If the Judge be left unfettered by a body of jurors

better justice is expected than when he is *encumbered* with such a body. The jury system may be abolished, or the lists ought to be revised and bad jurors weeded out. But the difficulty lies in laying hands on a sufficiently large number of really efficient jurors.

4. The system markedly fails in cases of great importance, such as those in which a man of high caste commits any crime, in cases of murder where there is a possibility of a capital sentence being passed, and in cases of forgery or cognate offences where the accused holds a respectable position in society. The juror who would convict a fellow-countryman in such cases as these would be a bold man.

5. The Magistrate of Patna thinks that deliberate attempts are made in all cases to bribe the jury, and he has grounds for his opinion. Perhaps bribes are not paid so freely to jurymen as they are by persons who ought to be on the jury list in order to escape enrolment.

6. The principal causes which militate against the efficiency of the system are,—

(1) That the material in this country from which both grand juries formerly, and now special juries, and common juries are selected in England is as a rule uneducated and most unwilling to serve.

(2) That the only educated persons who understand the ways of our law Courts and our mode of dealing with crime are lawyers of various sorts, who, though very capable of working up a case to place before a Judge, attach too much importance to technical points of law, and are not the best judges of facts.

(3) Caste and religious prejudices, which lead to actual sympathy with some crimes.

(4) The innate laziness of the people, which leads them to seize on any flaw to enable them to throw out a case and escape the odium of being party to a conviction—a conviction in Court being looked upon by some people as a point scored by a foreign and hostile Government.

7. With regard to the question as to what opinion is entertained on the merits of the system, I refer you to the first part of my letter. It is only looked on as a boon by theorists, who make a grievance out of the fact that it is not extended to all cases and to all districts, as in Europe.

8. As regards any improvements in the system, I agree with the Judge of this district, whom I have consulted, that no cases arising out of disputes about land, cases connected with rioting and cognate offences, should be cognizable by juries. I also think it would be a good plan if lists of jurors could be made by classes, and power given to the Judge to draw one or more members from special classes where he thought fit. Classes could be arranged by creeds and by professions. Great care should be exercised in preparing the lists.

9. I must apologise for the delay in submitting the report.

From W. H. PAGE, Esq., Sessions Judge of Murshidabad, to the Chief Secretary to the Government of Bengal, Judicial Department,—No. 1291, dated the 25th September 1890. No. 59.

With reference to your No. J. $6\frac{7}{2}$ 2, dated the 23rd June last, and enclosure, on the subject of trial by jury in these Provinces, I have the honour to state, after some experience in the districts of the 24-Parganas, Howrah, Burdwan, Dacca, and Murshidabad, that I have no great faith in the system of trial by jury as it obtains here.

2. It is considered a sign of a backward district if trial by jury is not introduced, and the educated inhabitants are discontented until they get it; and when they do, every person does his best to avoid the necessity of serving.

3. I do not consider that we have the most capable inhabitants on the jury lists, the average juror as he appears in court being incapable of understanding any but the most simple question. In any case at all complicated he listens to the arguments of pleaders with a very faint idea of what it all means, even if he is able to keep awake, and take his orders at the end from the foreman, who is perhaps the one educated man in the box.

4. I do not think that the jury system necessarily favours the escape of criminals, except in cases where the only choice is between conviction for murder or acquittal, for I think that jurors often convict because they are unable to understand the objections to the acceptance of evidence.

5. In simple cases of offences against property there is a very fair probability of a reasonable verdict, but in such cases a Judge does not stand in need of the aid of a jury, and I am not aware that their verdict is more to be relied upon than the finding of a Judge sitting alone.

6. It is said to be the duty of the Judge to decide questions of law, but the end to which the efforts of jurors of some education is directed is to find some offence for which persons under trial may not receive a heavier sentence than in the jurors' opinion ought to be inflicted.

In the same manner in which they show their reluctance to convict where there is a possibility of a capital sentence being passed, native jurors are very much given to twisting the law, so as to prevent a Judge, whom they suspect of being over-severe, from being able to inflict too heavy a punishment. Thus I have had men found guilty under sections of the Penal Code which had never been thought of as applicable by pleaders on either side or myself, simply because the section which would have applied left too wide a discretion as to punishment, and I have been addressed by jurors in some such words as these—"We find the prisoner guilty, but we do not agree with you as to the section."

7. One principal reason of the faith in the trial by jury in England is the assurance that the jurors will decide the case on the evidence brought before them in Court, while, on the other hand, it is difficult to trust such juries as we have in Bengal not to be influenced by rumours and gossip heard outside. I have a very distinct recollection of a case which I tried at Alipore about ten years ago. The case was one of a very horrible murder, if the story of the prosecution was true, and after a trial of about three weeks the jury were divided in opinion. That was all I knew at the time, but it turned out afterwards that there were three for conviction and two for acquittal. I sent them back to see if it was not possible to come to a unanimous verdict, and they returned in about five minutes with a unanimous verdict of guilty. Before they left the Court, the two were asked what had made them change their mind so quickly. They replied—"When we returned to the jury room, we told the majority we could not convict on evidence which was so plainly concocted; the majority answered, 'of course the evidence is concocted, but everybody knows these are the men,' and so we gave in," and these were men with a sufficient knowledge of English to follow the arguments of counsel and the summing up in that language. I think it is improbable that we have better material for jurors in the mofussil.

Nos 60 & 61. From A. POWER, Esq., Officiating Commissioner of the Dacca Division, to the Chief Secretary to the Government of Bengal,—No. 1357—J., dated the 7th October 1890.

With reference to your No. J. 6 $\frac{T}{2}$ 2, dated 23rd June 1890, calling for a report on the points raised in India Government No. 742, dated 31st May 1890, on the subject of the working of the jury system, I have the honour to state that Mr. Monahan, Officiating Magistrate of Dacca, says that he has no experience whatever in the matter; and that Mr. Hare, the permanent Magistrate, had not time before he left to record his opinion. Mr. Monahan has sent the accompanying copy of a note of certain cases recently tried at Dacca, in which the jury system is said to have failed.

2. I myself, too, have had no experience, as a Magistrate, of jury districts, and therefore write more or less *ex cathedra*. When guided by an able Judge, mofussil juries appear to return fairly sensible verdicts; but then it is open to remark that an able Judge could very well dispense with their services, and a jury, in conjunction with a moderately efficient Judge, is more likely to go wrong, and the wrong is less likely to be righted, than when cases are tried by such a Judge with the aid of assessors only; for the Judge is, at any rate, trained to the work and the jury is not: third-rate professionals are on the whole superior to first-class amateurs.

3. That as a means for the repression of crime it ranks below the assessor system is a proposition concerning which, I take it, there can be little difference of opinion.

4. In this country special characteristics have to be considered, *e.g.*, religious scruples against taking life; caste, social, and racial prejudices; general timidity; aversion to give offence to any one likely to retaliate, and where wealthy persons are concerned, the danger of bribery: in short, want of moral fibre and robustness. Is the retention or extension of the jury system likely to be a gain? The accused person's interest must be secondary to that of the public. In England it is beginning to be felt that trial by jury is an anachronism: its sphere is being contracted, not extended. There the system had a history and a meaning. It was specially valuable in State cases, when the impartiality of the Judge could not be trusted. The converse is now much more likely. Partial and perverse verdicts occur almost daily in Ireland, and have been common for generations past. A specimen of his class was the juror who, after the trial of Daniel O'Connell, boasted, that he "would have eaten his boots sooner than find the Liberator guilty of anything." Attempts to eliminate gentlemen of this kidney by exercise of the right of challenge is called by the Patriots "packing a jury." In India, Judges hold office by right, not by favour, and are entirely independent of political influence. Juries are far less likely to be impartial. I think the aid of assessors is sufficient for explaining ambiguities of native witnesses' language and bearing of their customs on evidence, and am of opinion that there would be a distinct gain in the administration of justice if the system of trial by jury were wholly discontinued.

Note on certain recent cases exemplifying the working of the jury system in Dacca.

GACHA MURDER CASE (No. 3 OF 1884).

This case arose out of a dispute between the Raja of Bhowal and one Mohim Chandra Chowdhury of Gacha regarding some lands concerning which a partition case was then pending.

The Raja some time before the occurrence established a cutchery at Gacha, of which the deceased Umesh Chandra Bakshi was in charge. There was constant feud between the Raja's men and Mohin Chowdhury's people, which one day culminated in an attack on Umesh Bakshi, who received severe injuries and died shortly after.

The total number of persons accused in this case was 13, of whom four—

(1) Subha Singh,
(2) Subedar Khan,
(3) Bhairab Singh,
(4) Kalimuddi,

were sent up in the first trial before the Court of Sessions, which took place on 1st March 1884.

All these persons were charged under sections 148, $\frac{149}{455}$, $\frac{149}{302}$, Indian Penal Code. Subha Singh was also charged under section 302, Indian Penal Code, and Kalimuddi was also charged under section $\frac{114}{302}$, Indian Penal Code.

Three of the jury acquitted all four men on all the charges. Two of the jurors found Subha Singh guilty under section 302, $\frac{149}{302}$, $\frac{149}{455}$, Indian Penal Code, and acquitted the other accused.

One of the jurors found all the accused guilty under section 148, Indian Penal Code.

Four found all the accused not guilty under that section.

The Judge completely disagreed with the verdict of the jury and referred to High Court under section 307 of the Criminal Procedure Code.

The High Court passed the following sentence:—

Subha Singh	Sentenced to transportation for life under section 302, Indian Penal Code.
Subedar Khan . . . . . Kalimuddi . . . . . Bhairab Singh	Sentenced to 7 years' rigorous imprisonment, each under sections 326 and 149, Indian Penal Code.

In the second trial before the Sessions Court—

(1) Dengari *alias* Balai,
(2) Shaharali,

were sent up as accused. This trial took place on 24th August 1885.

The jury, by a majority of four against one, returned a verdict of "not guilty."

The Judge differing from the verdict of the majority, referred to the High Court.

The High Court pased the following sentence:—

Shaharali	Sentenced to ten years' rigorous imprisonment under section $\frac{326}{149}$, Indian Penal Code.
Dengari *alias* Balai	Sentenced to seven years' rigorous imprisonment under section $\frac{326}{149}$, Indian Penal Code.

The last trial before the Sessions Court in this case took place in September 1889. Surendra Nath Roy Chowdhury, who had been absconding until 29th June 1889, when he voluntarily gave himself up, was the accused.

The jury returned an unanimous verdict of "not guilty." The Judge, differing from the verdict, referred to the High Court. The High Court sentenced Surendra Nath Roy Chowdhury to three years' rigorous imprisonment under sections 149, 147, and 114, Indian Penal Code.

During the Sessions trials in 1888, the Judge differed from the jury in four cases, and referred them to the High Court.

In the first of these cases the accused killed a connection of hers by hitting him on the head with a wooden stool. She was charged under sections 302, 304, and 325, Indian Penal Code. The Judge charged for conviction. The jury returned a verdict under section 304-A. The Judge referred to the High Court, and the accused was sentenced to transportation for life, under section 304, Indian Penal Code, by the High Court.

In the second case the accused were committed under sections 376, 457, 454, and 323, Indian Penal Code. The charge was rather for acquittal. The jury returned a verdict of "guilty" under sections 457, 354, and 323.

The Judge referred to the High Court.

The High Court acquitted the accused.

In the third case seven accused were charged under sections $\frac{304}{149}$ and $\frac{305}{149}$.

Three of the jury were for an acquittal. The other two found all guilty under section 148 and three under section $\frac{325}{149}$.

The Judge acquitted two accused and referred the case against the other five.

The High Court convicted three under section $\frac{147}{149}$ and acquitted two.

The fourth case is one well worthy of notice.

The facts of the case are these: —

The accused stayed with a prostitute for three days. On the morning of the fourth day, a woman who had lived in the same *bari*, hearing a noise, looked into her friend's hut, and saw the accused hacking the deceased with a *dao* and then saw him bolt.

She raised an alarm and the accused was seized by perfect strangers, who happened to be coming along. The jewellery of the deceased was found on him, and wet blood was on his person.

The accused was committed under sections 302 and 380, Indian Penal Code. The evidence was of the clearest possible kind.

The Judge charged strongly for a conviction of murder, but the jury unanimously acquitted; the foremen stating in Bengali, "We are unable to find him guilty of anything."

The Judge referred to the High Court.

The High Court ordered the man to be hanged.

Nos. 62 & 63. From E. V. WESTMACOTT, Esq., Officiating Commissioner of the Presidency Division, to the Chief Secretary to the Government of Bengal,—No. 106-J. G., dated the 16th October 1896.

With reference to your telegram of this day's date, I have the honour to state that no reports have yet been submitted by the Magistrates of any of the districts of this division except Nadia. I enclose a copy of Mr. Glazier's report, but will not myself say more at present than that my opinion of the jury system as tried in Bengal is that it has by no means strengthened the administration of justice, but has enabled many guilty persons to escape punishment. Even in England it is popularly believed to be for the advantage of an innocent person to be tried by a Judge sitting alone, and for the advantage of the guilty to be tried by a jury and the popular belief is by no means unfounded. In Bengal it is still more advantageous for a guilty person to be tried by a jury. When the Bengali is not a Government servant, acting under the supervision of superior authority, but is irresponsible, I do not consider that he can be trusted to decide a question upon the evidence before him, especially if his verdict is likely to entail capital punishment on anybody, or any punishment at all on a person of good caste. There are many crimes with which the Bengali feels sympathy, and the Bengali juror gives his verdict according to his feelings and not according to the evidence.

From E. G. GLAZIER, Esq., Magistrate of Nadia, to the Commissioner of the Presidency Division,—No. 1470-J. G., dated the 30th September 1890.

In reply to your No. 110-J. G., dated 5th September 1890, I have the honour to report that I am of opinion that the jury system is quite unsuited to the native of this country, and tends to the protection rather than the repression of crime. An ordinary jury is averse to convict in a case of a capital crime or when a man of high caste or social position would be liable to punishment, and miscarriage of justice constantly occurs. On the other hand, there is no doubt that the abolition of the system would be most distasteful to the educated classes of Bengal. I would recommend that jury cases be confined to those falling under Chapter XVII of the Indian Penal Code (offences against property), and that some qualification of education be fixed for those to be called to sit on as jury in criminal trials.

Nos. 64 —66. From G. TOYNBEE, Esq., Officiating Commissioner of the Burdwan Division, to the Secretary to the Government of Bengal, Judicial Department,—No. $\frac{1207\text{-T. J.}}{292\text{-J. G.}}$, dated the 31st October 1880.

In reply to your Circular No. J. 6 $\frac{T.}{2}$ 2, dated the 23rd June 1890, I have the honour to submit the following report:—

I.—How the jury system has worked.

2. I enclose a table showing the results of Sessions cases in the three jury districts of this division during the past five years. The figures speak for themselves, and require little or no comment from me. Those shown in column 7 by no means represent all the cases in which the Sessions Judges concerned *disagreed* with the jury, and I cannot but think that there is more hesitation on their part than there ought to be in supporting their own opinion by a reference to the High Court under section 307, Criminal Procedure Code. The orders given in paragraph 22 of the Government Resolution on the Police Report for 1885 do not appear to have had much effect in this respect.

3. Mr. R. C. Dutt, the Magistrate of Burdwan, writes as follows :—" During the short time that I have been in Burdwan the jury system has worked in a manner most detrimental to the interest of justice and also to repression of crime. " This Magistrate recently asked me to request Government to file appeals against three acquittals at the Sessions, and in two of those cases I complied with his request (*vide* this office No. 115-T. J., dated the 23rd September last, and No. 116-T. J., of the same date). The result of the application is not yet known.

4. I forward in original a very able and outspoken report (No. 1725, dated the 9th—11th August 1890) received from Mr. H. G. Cooke, the District Magistrate of Hooghly, in which the evils of the present jury system are fully exposed. My experience is entirely in accord with him, and it extends to an incumbency of five and a half years in the same district.

II.—The merits of the jury system as a means for the repression of crime.

5. I have no hesitation in saying that it has none. On the contrary, an accused person committed to the Sessions in a jury district has far more chance of escape than one tried by a Judge or Magistrate sitting singly, or aided by assessors. Mr. Cooke has clearly pointed out how this is so.

III.—What improvements are called for.

6. I agree with the Magistrate of Hooghly that the best improvement is the total abolition of the system, as wholly and inherently unsuited to this country. I do not advocate any attempt at improvement in the way of changes in the schedule of offences triable by juries, or in the amendment of the procedure of Chapter XXIII, K, sections 319 to 332 of the Criminal Procedure Code. It is quite impossible, as Mr. Cooke points out, for any District Officer to obtain in his division, from among the persons qualified under section 319 to act as jurors, a quorum of jurors who can conscientiously be said to be fit to exercise the function. If the jury system be retained, the qualifications attaching to the liability to serve should be very considerably raised. To do this would throw the burden of attendance on a very limited number, and would render frequent service as a juryman so unpopular as to jeopardise the administration of justice still more seriously.

Statement showing the results of Sessions trials by jury in the districts of Burdwan, Hooghly and Howrah, during the past five years, 1885 to 1889.

Districts.	Total number of cases committed to the Sessions.	Total number of Persons				Number of Cases referred to the High Court by Judge under Section 307, Criminal Procedure Code.			Remarks.
		Committed.	Convicted.	Acquitted.	Pending.	Total number of cases.	Number in which High Court agreed with the Judge.	Number in which High Court differed from the Judge.	
1	2	3	4	5	6	7	8	9	10
Burdwan	154	244	87	156	1	* 9	4	5	* 1 case under sections 409 and 467, Indian Penal Code. 1 case under section 376. 1 „ sections 109 and 494. 1 „ „ 379 and 75. 1 „ section 195. 1 „ „ 465. 1 „ sections 465 and 466. 1 „ „ 109 and 366. 1 „ section 193.
Hooghly	159	313	128	173	(*a*) 12	† 13	11	2	† 1 case under sections 454 and 75. 1 „ section 436. 1 „ „ 302. 1 „ sections 467 and 193. 1 „ section 435. 1 „ „ 211. 1 „ „ 302. 1 „ sections 366, 363, 109 and 498. 1 „ „ 302, 304, and 459. 1 „ „ 457, 380, and 75. 1 „ section 302. 1 „ sections 307 and 326. 1 „ sections 302.
Howrah	113	(*b*)171	112	59	...	‡ 2	2	...	‡ 1 case under sections 304, 326, and 385. 1 „ section 317.
Total	426	728	327	388	13	24	17	7	

(*a*) One died under trial.

(*b*) Out of these, four were withdrawn, as they were punished in other cases at the time, and one for insufficient evidence.

No. 66. From H. G. COOKE, Esq., Magistrate of Hooghly, to the Commissioner of the Burdwan Division, —No. 1275, dated the 9th—11th August 1890.

With reference to your Circular No. 140-J. G. of the 5th July 1890, I have the honour to submit the statement called for and to make the following remarks.

2. It is not given to an executive officer to study minutely the working of the jury: he is only in a position to judge by results, and to bring to light any incidents that may come to his notice extrajudicially. I shall first judge the Hooghly jurymen by the results of the period of five years under consideration.

3. I think it reasonable to give the jurymen the advantage of the doubt in such cases as were not referred to the High Court by the Judge, though in doing so I am aware that I am making a great concession. From my intercourse with Judges, which has been very constant and close for many years I can say with some confidence that Sessions Judges are averse to submitting cases in which they differ from the jury to the High Court, under the impression that that tribunal seldom interferes with the decision of a jury on a question of fact. I have known Sessions Judges display a strong disposition to refer cases, but abstain doing so for the above reason. So that, I think, I may say that the number of cases actually referred to the High Court is far from representing the number of failures of justice which may be attributed to the jury system. But I have no intention of quoting, nor am I in a position to quote instances of the kind, and I shall confine myself to making the statement, which, I have reason to believe, will be confirmed by Judges themselves.

4. Nor is it necessary, in the case of Hooghly at least, to go so far a field to establish the charge of incompetency in the case of juries. The statement annexed will show that in five cases of murder the verdict of acquittal of the jury was referred for reversal to the High Court, and in four it was reversed. In a sixth case, where the charge was an attempt to murder, the acquittal was not set aside. In 13 cases referred in five years, six referred to murder or attempt to murder, and four of these acquittals were reversed.

5. But the Hooghly jurymen's sympathies are not restricted to murderers. Of the seven remaining cases, in all of which acquittals were set aside, the jury were dealing with habitual burglary; on two occasions with arson, perjury, forgery, false charge, kidnapping, adultery and mischief with explosives.

6. From this I think it must be conceded that Hooghly jurymen, as administrators of criminal justice, are bad all round. Were the verdicts of acquittal set aside by a Magistrate or even by a Sessions Judge, it might be suspected that executive zeal had been at work; but the Honourable High Court has no sympathy with executive zeal, and we may assume, therefore, that in every case of an acquittal being set aside, the acquittal was due either to perversity or stupidity.

7. Not even the most ardent advocates of the introduction of European institutions into Bengal would venture to apologise for their failure by saying that the Bengali is stupid. It is necessary therefore to attribute the failure of juries in Hooghly to perversity.

8. Next to consider facts that have incidentally come to my notice in relation to trial by jury in India. In the letter of the Officiating Secretary to the Government of India, I find one cause of such perversity is set forth, though, I believe, imperfectly set forth. There is a reluctance on the part of the native juryman to convict where there is any possibility of a capital sentence; but I believe that this reluctance is not extended uniformly in all cases, and that it is not connected, save in rare cases, with any delicacy about taking human life as such. There is not one year, in the period under consideration, in which a Hooghly jury has not convicted under section 302; but I venture to say that in none of these cases was the accused a Brahman, or even a member of that ill-defined class who are styled "*bhodro*," or respectable. I feel confident that the fate of a Mussulman or low-class Hindu *cæteris paribus* would not be the same at the hands of a jury as that of a "*bhodro*;" and that notably that Brahman would enjoy a certainty of acquittal.

9. Here, then, we have a defect in the jury system in India, which cuts at the root of the impartial administration of justice, and disqualifies the Indian juryman from being capable of administering justice between man and man; his religious and social prejudices overrule his oath and sense of right; it is impracticable to obtain from him a just verdict.

10. Nor do I believe that such moral obliquity is at all restricted to cases in which a capital sentence is possible. I believe the same feeling would influence the jury in a case of rape, perjury, forgery, or burglary in which a "*bhodro*" was concerned.

11. Another cause of the failure of jurymen to convict was brought to my notice very recently by a late member of the Viceroy's Council, who told me that the people of Bengal did not agree with our criminal law, and took this means of testifying their dissent. I have heard of Judges of high tribunals modifying the statute law to bring it into accordance with

their own notions of what law should be, or what law is in other lands; but the idea of jurymen giving preverse decisions as a protest against the statute law of an alien Legislature is quite new. The only parallel that I can recall is that of an Irish officer of some standing in the Indian service, who propounded the theory that no Irishman was bound by the laws of the United Kingdom, because he did not make them.

12. However grotesque the attitude of the jurymen may be, who seek by perverse verdicts to adjust the practical working of the criminal law so as to bring it into accord with their own conceptions of what it should be, that such a sentiment exists is exceedingly probable, and this should not be lost sight of.

13. A third reason why jurymen show a disposition to acquit is that in nearly every instance cases coming before the Sessions Court have been handled by the police, and it proves invariably a trump card in the hand of the pleader for the defence if he can point out the smallest suspicion of crooked dealing on the part of the investigating officer; and in view of the fact that the class from which jurymen are drawn, like as all other classes in Bengal, had the most intense distrust and suspicion of the Police, it does not take much proof of irregularity to prove fatal to a case.

14. The above are, I believe, the three main causes that predispose a jury to acquit. I may perhaps add a fourth, *viz.*, extrajudicial influence. I am aware that it is considered an important matter for the Crown Prosecutor to get a case concluded in a day; because if it stands adjourned the matter will be discussed and decided out of Court by a sort of plebecite, to the formation of which clerks, mohurirs, and even chuphrassies will all contribute. An ingenious and fanciful theory to account for the innocence of the accused will be put in circulation, and will be accepted by the jurymen and the public generally in preference to the story of the prosecution.

15. What Magistrate has not had these plausible stories offered him, sometimes in Court and sometimes by a Deputy Magistrate in explanation of a somewhat extraordinary decision which is irreconcilable with the record.

16. As for improvements in the working of the jury system, there is but one improvement that will do good, and that is its abolition. The material for forming reliable juries is so scanty, that I say without hesitation that there are not a dozen men in the district in whom I should feel the same confidence of obtaining in every case that strict impartiality as I should expect from an ordinary English common jury. And twelve men are not enough for the purpose.

17. It was to be expected that the defects of the jury would be attributed to any cause but the inherent unfitness of the people of Bengal for the work. Thus it has been said that the fault lies in the selection of jurymen. I do not think that this at all accounts for the failure. Indeed, it is notorious that the jury lists are nowhere complete. The Judge and Collector have very little discretion in their selection. Section 319, Civil Procedure Code, prescribes, with certain exceptions specified in section 320, that all persons between the ages of 16 and 60 are liable to serve as jurors. The lists, even in a small district, if complete, would amount to some tens of thousands of names. Section 320, it is true, gives the Judge and Collector power to declare persons qualified, but how this operation is to be performed on such a list is one of the riddles that the Legislature sets an official without supplying a hint as to its solution, beyond that one qualification seems to be that a juryman must not be a person likely to be successfully objected to under section 278.

18. As a matter of practice, the jury lists consist of names supplied by the *amlah* of men of fair position and education. I say by the *amlah*, for no Judge or Collector could make out such a list from his personal knowledge. He may personally know a few men in his district: possibly, if an affable gentleman, as many as two or three score, but often less. He may, by reference to lists of Honorary Magistrates, and Boards, and Committee members, add to that list; but as for making any approach to an exhaustive list of persons qualified, I do not believe that there is a Judge or Collector who would venture to claim the power to do it. Then the law is vague, and any narrowing the list, to suit fastidious ideas as to who is qualified to act as a juror, does not seem to be in accordance with its spirit.

19. I take it that the list of jurors, far from exhausting the list of men who are as qualified as those at present on the lists, omits the names of many who are equally qualified. There is an abundance of such material. It is not good, I admit; but if all, who do not attain that rigid standard of qualification which the cases demand, were excluded, the balance would not suffice for the practical working of the jury system.

20. It only remains to briefly refer to two recent cases in which the jury lamentably failed. The first was that of Khan Chand Boid, who shot a brother constable dead from

pique, because his victim, a low-caste man, had thrown him in a wrestle. This man was acquitted by a jury, as far as can be judged, because he was a Brahmin—that fact having been urged in his defence by his pleader. The High Court transported him for life.

21. The second, Rassik Ghosh, who killed his wife, Felli Gowalini, by striking her with a *dao*, as she had fallen in love with one Kader Ghose. He was committed to the Sessions Court for trial under Section 302, Penal Code. In this case the accused was acquitted by a jury, but awarded seven years under section 304 by the High Court.

No. 67. From T. D. BEIGHTON, Esq., District and Sessions Judge, Dacca, to the Chief Secretary to the Government of Bengal,—No. 45, dated the 16th January 1891.

I have the honour to reply to your No. 4096 J., dated 12th ultimo, asking my opinion in connection with the working of the jury system in Bengal. My views have been frequently expressed on this subject at much greater length and with more *minutiæ* of detail than are probably required at present; and I believe the Government are already in possession of more than one official statement of my opinion on the system. I may, perhaps, be permitted to draw the attention of Government to a report submitted by me while I was Sessions Judge of Patna in 1884.

2. Further experience has only strengthened my conviction as to the general unsuitability of the jury system for certain classes of crime; and although I have to traverse ground already fully covered, it would, perhaps, be desirable to recapitulate the heads of the conclusions at which I have some time ago arrived, observing that my experience now embraces all the jury districts of Bengal, with the exception of Nadia.

3. The main object to be attained is (1) to lessen the necessity as much as possible for reference to the High Court under section 307, and (2) at the same time to increase the efficacy of such references when made. The existence of such a provision, by which a unanimous verdict may be altogether set aside, is of course a complete anomaly, rendering the expression "trial by jury" in this country misleading and inaccurate as regards the essential features of its prototype in England. It is, therefore, naturally the weakest point in the system, and the one which lends itself most easily to attack, and it is not surprising that native public opinion should strongly condemn the reversal of a verdict by a means which has no counterpart in the English law. It is then clear that if a jury is to be retained in this country at all for educational or semi-political reasons, it is desirable to minimise such references. For this reason, as has been repeatedly pointed out, the first essential is the withdrawal from the cognisance of juries of trial for any offence in which death has occurred (sections 302, 304 and 396, Indian Penal Code). I find that, except in Bengal and in a very few districts of the Bombay Presidency, murder and culpable homicide cases are nowhere in India triable by jury. More than half the references which come before the High Court are from acquittals for offences under sections 302 and 304, Indian Penal Code. Native jurors are essentially, by habit of mind, ancient custom, and race prejudice, unfitted for pronouncing a just and true verdict where a capital sentence may be the penalty. The feeling among all but the most educated classes, of whom the majority are found in the metropolis, is the fatalistic one that, because one life has been sacrificed, which is now irremediable, it would be wanton and useless cruelty to sacrifice another life. This is the attitude which is still prevalent among a considerable section of the classes from whom our jury lists are maintained. One illustration of a verdict, which can only be accounted for by considerations, such as the preceding, may be given here. It occurred in the district of Patna during my incumbency. A Brahmin sepoy in one of the Bengal Native Infantry regiments ran 'amuck,' shot several of his comrades, barricaded himself in a hut in the centre of the Native Infantry lines with his rifle and several rounds of ammunition, and threatened death to any one who approached. He was finally seized by an English officer who crept into the hut from behind. The murders had been committed in the sight of nearly the whole regiment, and numbers of eye-witnesses were examined. The accused had literally no defence, but on a simple plea of not guilty in the Sessions Court the jury aquitted him.

4. To attain the second of the ends above specified, *i. e.*, to render a reference under section 307 thoroughly efficacious when it unhappily becomes necessary to refuse to accept the verdict, an amendation of section 303, Criminal Procedure Code, appears to me essential. One portion of this section runs as follows: "and the Judge may ask them such questions as are necessary to ascertain what their verdict is. Such questions and the answers to them shall be recorded." I would alter this clause as follows: "and the Judge shall ask them such questions as are necessary to ascertain what their verdict is, and the reasons for such verdict." As long as the right of interference with a verdict exists, it must be obvious that the reasons

which guide a jury to a certain conclusion are the most important elements to consider in arriving at a conclusion, whether a verdict is reasonable or not. I consider that therefore a Judge should be bound to inquire, after every verdict, the ground on which a jury find the accused guilty or not guilty. In both cases the verdict not being absolute, the Crown and the public alike have the right to know the grounds by which the jury are actuated in convicting or acquitting the accused. It may often happen that a Judge who is at first sight disposed to differ from a verdict of acquittal may, after considering the reasons assigned, come to the conclusion that they are reasonable. On the other hand, if the reasons are manifestly unsound; if they betray either a gross misconception of fact or the existence of prejudice, the educated native public would themselves, it is to be hoped, prefer that they should be brought to light and be subjected to the criticism of the higher authorities. Assuming the fitness of the native community in the seven jury districts for the performance of this function, there can be no impropriety in placing on record the considerations by which in each case they are actuated. Lastly, it would greatly assist the High Court in the discharge of the difficult task imposed upon them. The Judge is already bound to record the opinions of assessors, although he is not compelled to conform to them. He is, however, bound to give effect to a verdict of a jury unless it is perverse or unreasonable; but to decide as to the perversity or unreasonableness of a verdict, without knowing the reasons which guided the jury to it, is, it appears to me, often an impossibility.

5. The next suggestion I have to make relates to the possibility of inclusion among the offences triable by jury in the present jury district, or some of them (an so which I have something to say hereafter), of certain other offences which are now excluded from the list—a change which, I need scarcely say, may be made by the Local Government under the provisions of section 269, Criminal Procedure Code, without the necessity of fresh legislation. The list of offences triable by jury in the North-Western Provinces appears to me to be the best that could possibly be made with a view, on the one hand, to the utilization of the special aptitudes of native jurors for dealing with matters affecting their own rites and customs, and the elimination on the other of that class of cases which, owing to native prejudices and habit of reasoning cannot be tried in a dispassionate and impartial manner. I think, therefore, that offences relating to marriage, triable under Chapter XX of the Indian Penal Code, should be included among offences triable by jury. It may be observed that offences involving the decision of questions analogous to those arising in marriage cases are even now cognizable by the jury. The offence of kidnapping or abducting a woman with intent to marry her against her will, or to seduce her to illicit intercourse, is already so triable. The peculiar fitness of native tribunals to decide as to the bearing of facts connected with the rites and customs of various sects of the Hindu and Muhammadan communities is sufficiently obvious. A decision as to the existence or force of a particular caste or local custom, which is often essential to a determination as to the guilt or innocence of the accused person is one which, it appears to me, can be more fairly and satisfactorily decided by a native jury than by an English Judge. In such cases, too, the jury is likely to have a keener insight into the motive of the accused.

6. I think, however, that before any new offences are included in the category, something more is required as a basis for action than the reports of officials, however experienced they may be. The matter is one of serious importance, and I consider it would be desirable to tap all the recognized channels of native public opinion, and in addition to take some evidence in the jury districts themselves. These are the only legitimate means by which we can thoroughly ascertain the feeling of the public as to the desirability of change in an important class of cases.

7. The only other point which I think it desirable to notice in this very brief abstract of my views, is the desirability of reconsidering the local limits of the system. There are at present seven jury districts. The only public documents, of which I am aware, which throw any light on the relative success which attends the administration of criminal justice at Courts of Sessions in each of these districts, are the Police Administration Reports. The data therein available do not, however, profess to be exhaustive, and the report is, of course, treated from a necessarily narrow and professional point of view. The High Court Administration Report is silent as to any detailed comparison between the results of trials in different districts. There can, however, be no doubt that the results are worse in some districts than others; or, in other words, it can be shewn that each year, in some districts, a very appreciable amount of mischief and miscarriage of justice takes place in regard to certain classes of cases. Among these I should be inclined to say that Patna is pre-eminent. But before any order is revoked or altered under the provisions of section 269, Criminal Procedure Code, I think detailed inquiries should be made. A careful supervision and scrutiny, not only of the results of cases for some years back, but of the records themselves, the *personnel* of the

jury, and other matters affecting the trials, should be effected. The results of a careful examination would be invaluable, and would throw light on many complex questions at present untouched, *e.g.*, the class of jurors whose verdicts are most frequently found open to objection, the prevalence of such classes in a greater or less degree in any particular district, and the extent to which Brahmin criminals obtained a larger immunity than others of the lower castes. The jury lists should also be very closely sifted. I think also that as the jury system is one of the matters with which native public opinion very largely concerns itself, it would be desirable to have a native unofficial member in any commission which Government might think it desirable to appoint. A complete inquiry into the subject, accompanied by evidence locally recorded, will at any rate enable the Local Government to safely effect certain modifications under the provisions of sections 269 and 274, Criminal Procedure Code, and may perhaps show the necessity for an amendment of the Criminal Procedure Code on the lines suggested in paragraph 4.

No. 68. From A. SMITH, Esq., Commissioner of the Presidency Division, to the Chief Secretary to the Government of Bengal,—No. 14-J. G., dated the 18th February 1891.

In continuation of this office No. 106-J. G., dated the 16th October last, and with reference to your No. 424-J., dated the 27th ultimo, I have the honour to report that the only other districts in this division in which the jury system prevails are the 24-Parganas and Murshidabad. The Magistrates of these districts have submitted statements showing the results of sessions trials in them; the former for the five years from 1885 to 1889, and the latter for the ten years from 1880 to 1889. Copies of these statements I enclose. In the 24-Parganas these results are generally satisfactory, while in Murshidabad they are very poor. The satisfactory results in the former are ascribed to two causes. The first is that in this district the Crown is more efficiently represented in Sessions trial than in most districts of the mofussil. There is now a special public prosecutor who does no civil work for Government, but is exclusively employed in the conduct of criminal cases, which are unusually numerous, having averaged more than 90 per annum during the last five years. The remuneration attached to the office is thus sufficient to attract pleaders of good standing in their profession. It is the opinion of Babu Bunkin Chunder Chatterji, an experienced and capable Deputy Magistrate, that the bad results in jury trials in the mofussil are greatly due to the superiority of the legal talent available for the defence over that for the prosecution, and Mr. Bolton thinks that the results would be greatly improved if in jury districts the emoluments of the Government pleader were enhanced so as to secure the services of the best legal talent locally available.

2. Another, I think, very important cause of the good results obtained in the district is that the class from which jurymen are drawn is both larger and of better material than in the mofussil. Even in the 24-Parganas there are complaints that improper persons are appointed, but in the mofussil things are much worse.

3. To these causes specified by the local officers, I would add the fact that the ablest and most experienced Judges, Magistrates and police officers are generally posted to the 24-Parganas, and that the larger publicity secured by the proximity of a large number of newspapers and the stronger public opinion are not without influence.

4. Mr. Luson, the Magistrate of Murshidabad, writing on this subject, observes as follows:—

> My own opinion is that in simple and short cases concerning offences against property, native jurors are not liable to make many mistakes: but that in serious and complicated cases, such as murder, dacoity, etc., they being quite untrained as Judges, become confused, and consequently give verdicts for the accused. Scarcely any spectacle, it seems to me, can be more painful than that of a body of ignorant men sitting as jurors at a trial extended through many days as is often the case, with their mental balance completely disturbed by the complicated procedure of the Courts and the methods of the legal advisers of the parties, especially as the wrong decision of the case may involve the peace and security of a large tract for years.

5. Both Messrs. Bolton and Luson are of opinion that an improvement in the *personnel* of juries is necessary. In order to effect this improvement it is suggested that a property and educational qualification should be prescribed for jurors, and as this would reduce the number of eligible jurors, it is suggested that the number of the jury should be reduced from five to three. Mr. Bolton, however, does not approve of this proposal. He suggests that section 276, Criminal Procedure Code, should be extended so that the system of special juries may be applied in the mofussil. He observes that from the list of common jurors a smaller list of special jurors may be prepared, for whom a somewhat high property and educational qualification should be prescribed, and it may be enacted that on the application of the prosecution

or of the accused, in cases of exceptional importance or difficulty, it should be within the discretion of the Sessions Judge to grant a special jury. Mr. Bolton also suggests that each special juror should be allowed a fee of (say) R16 a day for his services. This may give rise to a class of professional jurymen ; but, in his opinion, if payments are confined to special jurors, and if these are not permitted to serve oftener than once in 12 months, the danger will be avoided.

6. The Magistrate of the 24-Parganas further suggests that officers employed in drawing up jury lists should be enjoined to include only persons whose character and position are beyond question. Mukhtears and hangers-on of the Courts should, he thinks, on no account be admitted ; but, in his opinion, there is no objection to pleaders being included.

7. The Magistrate of Murshidabad is of opinion that trials by jury should be confined only to offences under sections 363, 366, 368, 369, 379, 380, 381, 382, 384, 385, 392, 393, 403, 404, 406, 407, 408, 411, 412, 414-417, 420, 457-459, 461, 462, 493-498, of the Indian Penal Code. Mr. Bolton, however, observes that if the special jury system be introduced, he does not think that any class of offences now triable by jury in Bengal, even murder and culpable homicide, should be withdrawn. On the other hand, he thinks there are certain offences not now triable by jury, such as offences under Chapter XV (religion), XX (marriage), XXI (defamation), and XXII (criminal intimidation), which may with advantage be made so triable.

8. Mr. Luson observes that there is a very decided opinion held by many that the Calcutta High Court have set themselves against interfering under section 307, Criminal Procedure Code, with the verdicts of juries on being moved to do so, and quotes the following dictum given in the case of Sham Bagdi, 20 W. R., 74 :—

If the High Court is to interfere in every case of doubt in any case in which it may with propriety be said that the evidence would have warranted a different verdict, then it must be held that trial by jury is absolutely at an end.

If the High Court dealt with the cases referred to them under section 307, Criminal Procedure Code, more upon their merits, he thinks that fewer miscarriages of justice would take place ; jurors would feel themselves constrained to exercise more conscientious deliberation, and the jury system would be less discredited.

9. My own opinion is that the system of trial by jury is not under existing circumstances a good one even in England, and is still less suited to the circumstances of India. I can see no advantage in removing the decision of questions of fact from a Judge, who has probably spent the greater part of the working days of his life in weighing evidence and deciding on it, and whose large experience consequently qualifies him in every way to decide correctly, and vesting it in a body of men who, if not ignorant or corrupt, have certainly had no judicial experience or training. From the excessive regard for technicality, which too frequently influences trained lawyers, such a body will doubtless be free ; but this hardly operates substantially to improve the administration of justice, because the technicalities are generally in the domain of law, and have to be dealt with by the Judge on the question of fact which they have to deal. A capable jury will, in a rough kind of way, arrive at a conclusion which in many cases, and particularly in the simpler ones, will probably be the right one. It is all the more likely to be so if the Judge indicates what the decision should be, and the jurors accept his counsel. It is, however, hardly to be doubted that when they differ, the decision of the trained Judge is the more likely to be correct. The probability varies according to the decree of capability of the jury. I would be inclined to vest the decision in the Judge. Whether the decision be so vested or not, it would, in my opinion, be largely in the interests of justice to reduce greatly the present excessive latitude of appeal allowed in criminal cases. There is no appeal in England, and the Courts here are in these times, whatever they may have been formerly, quite competent and honest as the corresponding Courts at home. They have the advantage of seeing the parties and the witnesses, and are thus in a much better position to determine truly than the superior Courts. Where the two differ on a question of fact, it is very far from probable that the judgment of the Court which has the least opportunity of judging rightly is the more correct.

No. 69.

APPENDIX A.

	Years.	Cases.	Persons.	
			Convicted.	Acquitted or discharged.
Chapter VIII—Offences against public tranquillity	1880	...	...	...
	1881	1	13	4
	1882	1	...	4
	1883	...	...	...
	1884	...	...	...
	1885	2	14	...
	1886	...	...	...
	1887	...	...	...
	1888	...	...	...
	1889	...	...	...
	Total	4	27	8
Chapter XI—Offences against public justice	1880	5	1	5
	1881	7	1	8
	1882	3	1	3
	1883	3	1	2
	1884	...	...	...
	1885	...	...	...
	1886	...	...	...
	1887	...	...	...
	1888	...	...	...
	1889	...	...	...
	Total	18	4	18
Chapter XVI—Offences affecting the human body	1880	14	5	14
	1881	17	8	15
	1882	16	11	13
	1883	11	8	6
	1884	9	8	1
	1885	11	10	2
	1886	10	14	10
	1887	11	2	13
	1888	8	2	9
	1889	27	20	13
	Total	134	88	96
Chapter XVII—Offences against property.	1880	18	20	32
	1881	18	17	13
	1882	23	16	25
	1883	20	23	15
	1884	22	24	35
	1885	25	45	40
	1886	18	13	20
	1887	7	4	3
	1888	10	5	8
	1889	12	12	5
	Total	173	179	196
Chapter XVIII—Offences relating to documents and trade-marks	1880	2	...	
	1881	1	1	...
	1882	1	1	...
	1883	2	2	...
	1884	4	1	3
	1885	...	...	...
	1886	2	1	1
	1887	1	...	2
	1888	...	...	...
	1889	1	...	1
	Total	14	6	9
	Grand Total	334	306	327

1885. No. 70.

Serial number given in the Provincial Police report.	Cases tried by			Convicted.	Acquitted.	Conviction reversed on appeal.	Conviction referred to High Court under section 307.	Conviction referred, set aside.	Acquittal referred to High Court under section 307.	Acquittal set aside.	Remarks.
	Jurors.	Assessors.	Total.								
Coin, stamps and Government notes . 3	...	3	3	1	2	...	...	...	...	...	
Murder . . . 12	12	...	12	4	(b)8	...	...	...	1	...	(b) Case withdrawn in one case.
Attempts at murder 13	3	...	3	2	1	(c)1	...	...	...	...	(c) Re-trial ordered.
Culpable homicide . 14	9	...	9	3	6	...	...	...	...	...	
Rape . . . 15	5	...	5	4	1	...	1	(d)1	...	...	(d) Ditto.
Unnatural offence . 16	2	...	2	2	...	...	...	...	...	...	
Grievous hurt . . 20	8	...	8	5	3	...	...	...	...	...	
Hurt by dangerous weapons . . 23	1	...	1	...	1	...	...	...	...	...	
Kidnapping . . 24	1	...	1	1	...	...	...	...	...	...	
Dacoity . . . 30	3	...	3	3	...	(e)1	...	...	...	...	(e) Reduced.
Robbery . . 33	1	...	1	1	...	...	...	...	...	...	
Serious mischief . 34	2	...	2	...	2	...	...	...	...	...	
Burglary . . . 36	10	...	10	8	2	(f)2	...	...	...	...	(f) Ditto.
Belonging to gang of robbers . . 39	1	...	1	...	1	...	...	...	...	...	
Theft . . . 44	14	...	14	11	3	(g)2	...	...	...	...	(g) Ditto.
Breach of trust . 45	1	...	1	...	1	...	...	...	...	...	
Receiving stolen property . . . 46	2	...	2	2	...	...	...	...	...	...	
Non-cognizable	8	...	8	6	2	...	...	...	...	...	
Total ...	83	3	85	53	33	6	1	1	1	...	

1886. No. 71.

Serial number given in the Provincial Police report.	Jurors.	Assessors.	Total.	Convicted.	Acquitted.	Conviction reversed on appeal.	Conviction referred to High Court under section 307.	Conviction referred, set aside.	Acquittal referred to High Court under section 307.	Acquittal set aside.	Remarks.
Rioting . . . 6	5	...	5	4	1	...	...	...	...	...	
Personating public servant . . 7	1	...	1	1	...	...	...	...	...	...	
Murder . . . 12	6	...	6	3	3	...	...	...	1	1	
Attempts at murder 13	3	...	3	3	...	...	...	...	...	...	
Culpable homicide . 14	12	...	12	8	4	1*	...	...	...	...	* Reduced by the High Court.
Rape . . . 15	2	...	2	1	1	...	...	...	...	...	
Unnatural offence . 16	3	...	3	2	1	1	1	...	...	...	
Grievous hurt . 20	4	...	4	2	2	...	...	...	...	...	
Kidnapping . . 24	3	...	3	2	1	...	...	...	...	...	
Dacoity . . . 30	7	...	7	6	1	1†	...	...	...	...	† Ditto.
Robbery . . . 33	1	...	1	1	...	...	...	...	...	...	
Serious mischief . 34	3	...	3	1	2	...	...	...	...	...	
Burglary . . 36	11	...	11	10	1	...	...	...	...	...	
Theft . . . 44	17	...	17	13	4	...	...	...	...	...	
Breach of trust . 45	2	...	2	1	1	...	...	...	...	...	
Receiving stolen property . . . 46	1	...	1	1	...	...	...	...	...	...	
Non-cognizable	13	2	15	8	7	...	...	...	...	...	
Total ...	94	2	96	67	29	3	1	...	1	1	

No. 72.

1887.

Serial number given in the Provincial Police Report.		Cases tried by: Jurors.	Assessors.	Total.	Convicted.	Acquitted.	Conviction reversed on appeal.	Conviction referred to High Court under section 307.	Conviction referred set aside.	Acquittal referred to High Court under section 307.	Acquittal set aside.	Remarks.
Coins, stamps and Government notes.	3	...	6	6	3	3	1*	...	...	...	...	* Reduced on appeal.
Rioting . . .	6	3	...	3	3	...	...	...	...	...	...	
Murder . . .	12	8	...	8	5	3	...	...	...	...	1	
Attempts at murder.	13	1	...	1	1	...	...	...	...	...	...	
Culpable homicide .	14	2	...	2	2	...	...	...	...	...	...	
Rape . . .	15	1	...	1	1	...	...	...	...	...	...	
Unnatural offences .	16	5	...	5	3	2	...	...	...	...	...	
Grievous hurt . .	20	1	...	1	1	...	...	...	...	...	...	
Hurt for extortion, etc.	22	1	...	1	...	1	...	...	...	...	...	
Kidnapping . .	24	2	...	2	2	...	...	...	...	...	...	
Serious mischief .	34	3	...	3	...	3	...	...	...	...	...	
Burglary . . .	36	12	...	12	12	...	...	...	...	...	...	
Rash act . . .	41	1	...	1	...	1	...	...	...	...	...	
Theft . . .	44	18	...	18	16	2	1†	...	...	...	...	† Reduced.
Receiving stolen property.	46	3	...	3	2	1	...	...	...	...	...	
Non-cognizable .	...	13	2	15	5	10	...	...	...	...	...	
Total .		74	8	82	56	26	2	...	...	...	1	

No. 73.

1888.

Serial number given in the Provincial Police Report.		Jurors.	Assessors.	Total.	Convicted.	Acquitted.	Conviction reversed on appeal.	Conviction referred to High Court under section 307.	Conviction referred set aside.	Acquittal referred to High Court under section 307.	Acquittal set aside.	Remarks.
Coins, stamps . .	3	...	4	4	1	3	1	...	...	...	...	
Rioting . . .	6	1	...	1	1	...	...	...	...	...	...	
Murder by dacoits .	9	1	...	1	1	...	...	...	...	...	...	
Ditto by others .	12	8	...	8	5	3	...	...	...	...	...	
Attempts at murder.	13	1	...	1	1	...	...	...	...	...	...	
Culpable homicide .	14	4	...	4	2	2	...	...	...	...	...	
Rape . . .	15	4	...	4	4	...	...	...	...	...	...	
Grievous hurt for extortion, etc.	19	1	...	1	...	1	...	...	...	...	...	
Grievous hurt . .	20	6	...	6	6	...	...	...	...	...	...	
Hurt for extortion .	22	1	...	1	1	...	...	...	...	...	...	
Hurt by dangerous weapons.	23	1	...	1	1	...	...	...	...	...	...	
Kidnapping . .	24	3	...	3	1	2	...	...	...	...	...	
Dacoity . . .	30	2	...	2	2	...	...	...	...	...	...	
Robbery . . .	33	2	...	2	2	...	...	...	...	...	...	
Serious mischief .	34	3	...	3	...	3	...	...	...	...	...	
Burglary . .	36	14	...	14	13	1	...	...	...	...	...	
Rash act . . .	41	1	...	1	1	...	...	...	...	...	...	
Theft . . .	44	35	...	35	31	4	...	...	...	...	...	
Breach of trust .	45	1	...	1	...	1	...	...	...	...	...	
Receiving stolen property.	46	4	...	4	2	2	...	...	...	...	...	
Non-cognizable .	...	10	1	11	5	6	...	...	...	...	...	
Total .	...	103	5	108	80	28	1	...	...	...	...	

No. 74.

1889.

Serial number given in the Provincial Police Report.		Cases tried by			Convicted.	Acquitted.	Conviction reversed on appeal.	Conviction referred to High Court under section 307.	Conviction referred set aside.	Acquittal referred to High Court under section 307.	Acquittal set aside.	Remarks.
		Jurors.	Assessors.	Total.								
Coins, stamps	3	...	1	1	1	...	...	...	...	...	...	
Murder	12	8	...	8	4	4	...	...	...	2	...	
Attempts at murder	13	2	...	2	2	...	...	...	...	...	...	
Culpable homicide	14	11	...	11	5	6	...	...	...	(a) 2	...	(a) Acquitted by High Court.
Rape	15	1	...	1	1	...	...	...	...	...	...	
Hurt for extortion	22	3	...	3	3	...	...	...	...	...	...	
Kidnapping	24	8	...	3	3	...	...	...	...	...	...	
Dacoity	30	8	...	8	4	(b)4	...	..	...	...	..	(b) Charge withdrawn in one case.
Serious mischief	34	3	...	3	1	2	...	...	...	...	...	
Lurking house trespass, etc.	36	7	...	7	4	3	...	...	...	...	...	
Receiving stolen property by dacoits.	38	1	...	1	1	...	...	...	...	...	...	
Belonging to gang of robbers, etc.	39	1	...	1	...	1	...	...	...	...	...	
Theft	44	17	...	17	14	3	...	...	...	...	...	
Breach of trust	45	5	...	5	4	1	...	...	...	...	...	
Non-cognizable	...	12	2	14	9	5	...	...	...	...	...	
Total 1889		82	3	85	56	29	...	...	...	4	...	
,, 1888		103	5	108	80	28	1	...	...	...	...	
,, 1887		74	8	82	56	26	2	...	...	1	...	(c) Rapes and unnatural offences. In the latter the High Court refused to interfere; in former re-trial was ordered.
,, 1886		94	2	96	67	29	3	1	...	1	1	(d) Five of murder and two culpable homicide. One of the first was convicted by High Court.
,, 1885		82	3	86	53	33	6	1	1	1	...	
Grand Total		436	21	457	312	145	12	(c) 2	1	(d) 7	1	

No. 75.

From H. J. S. Cotton, Esq., Officiating Chief Secretary to the Government of Bengal, Judicial Department, to the Secretary to the Government of India, Home Department,—No. 4675-J., dated the 21st December 1891.

In paragraph 7 of the letter from this Government, No. 122-J. D., dated the 22nd June 1891, on the subject of the working of the jury system in Bengal, it was proposed that section 307 of the Criminal Procedure Code should be so amended as to make it incumbent on a Sessions Judge to refer to the High Court every case in which he differed in opinion from a jury: in this recommendation the views expressed by Mr. Justice Prinsep and concurred in by his colleagues, Messrs. Wilson, Pigot, Macpherson, Trevelyan and Beverley, were adopted by the Lieutenant-Governor.

2. Sir Charles Elliott now desires me to bring to the notice of the Government of India the case of the third batch of prisoners tried in the 24-Parganas for rioting near Sham Bazar in the Suburbs of Calcutta, as a conspicuous instance of an important trial before a jury, in which justice has been thwarted and offenders have escaped punishment because they

were acquitted by the jury, and in which the Judge (Mr. Rampini), although he was evidently satisfied of the guilt of the great majority of the accused, did not refer the case to the High Court.

3. I am to enclose herewith a copy of the Judge's charge to the jury in this case, from which it will be seen that out of 29 accused persons, one (Elahi) was at once acquitted for want of sufficient evidence against him, and two (Jao and Jagru) were arrested after the riot was over, and it was conceivable that there might be some doubt about their identification. But the remaining 26 prisoners were captured on the spot, and were so severely injured in the riot that they were at once sent to the Medical College Hospital in three batches of 14, 2, and 10. About their identity there is absolutely no doubt. They were never lost sight of by the authorities, and their movements can be followed from the scene of the riot to the Medical College Hospital, from there to the Police Hospital, and from the Hospital to the Court. On behalf of the majority of them no defence was set up. *Alibis* were pleaded in the case of two, but the witnesses broke down so completely that the counsel for the defence, though he had more than 20 witnesses present, refused to call any more of them after eight had been heard. In the case of three who are Hindus, it was urged that it was unlikely that Hindus should have joined with Muhammadans in a riot the object of which was to protect a mosque, and that they must have been innocent spectators. Even this hypothetical plea could not be urged on behalf of the remaining 23 prisoners. The sole attempt of the defence was to shake the credit of the witnesses for the prosecution, and certain discrepancies between their stories, in matters not directly relevant to the issue, were brought out by a severe cross-examination. How slight was the importance that should be attached to these discrepancies is well and clearly pointed out on page 11 of the Judge's charge; that charge was clearly for a conviction, if not in all the 28 cases, at least in the cases of all but the three Hindus; and there is little doubt that every one who listened to the charge and heard the evidence must have expected a conviction. Yet in spite of this the jury unanimously acquitted the whole number. That this was a perverse and wicked verdict there can be little doubt. But the Judge, though he took time to consider his course of action, resolved not to submit it to the High Court under section 307 of the Criminal Procedure Code, and eventually accepted it and gave judgment accordingly. Subsequently to the trial some confidential communications have taken place between Mr. Rampini and this Government, and he has explained that he was actuated by the belief that the verdict of the jury being unanimous, it was useless to hope that the High Court would reverse it.

4. It appears then that the present state of the law is such that a Judge who has had special and large experience of jury districts, who has submitted numerous cases to the High Court under section 307, and whose charge shows that he was satisfied of the guilt of almost all the prisoners, did not think himself justified in making use of the section in a peculiarly scandalous case, where a verdict was given which, in the Lieutenant-Governor's opinion, no one could have concurred in who followed the dictates of his conscience or who respected his oath because that verdict was unanimous and a reference to the High Court would have been useless. It appears to the Government of Bengal that the facts of this case are a strong argument in favour of amending the law in the manner proposed in paragraph 7 of the letter quoted above.

5. It was further observed in paragraph 9 of the same letter that although the power of withdrawing certain classes of offences from juries rests with the Local Government, the Lieutenant-Governor was not prepared to give effect to his own views on the subject until the orders of the Government of India had been received. But I am to say that the present case (as well as others that have come to His Honour's notice) appears to show very decisively that, whatever may be done in other classes of cases, no time should be lost in withdrawing from juries the whole class of cases under Chapter VIII of the Indian Penal Code (offences relating to public tranquillity), and the Lieutenant-Governor therefore proposes, unless, pending general orders on the jury question, he hears to the contrary from the Government of India, to direct at once that all cases under this chapter shall be withdrawn from juries in all jury districts in Bengal.

CHARGE TO THE JURY.

No. 73.

The 28 accused in this case (there were up to to-day 29 accused, but one was acquitted this morning) are charged with various offences alleged to have been committed in connection with a serious riot, said to have taken place at Nikaripara on the 16th May last. It is said that a Hindu gentleman named Suresh Chandra Deb had purchased a piece of land

on which a hut used as a mosque had been erected. A municipal chaprasi named Aliyar was the nominal tenant of this land, his brother Amir being the mollah of the mosque, Suresh Chandra Deb, not getting his rent paid punctually, sued to eject Aliyar and obtained a decree in the Court of the Second Subordinate Judge on the 30th April last. The decree was to the effect that the defendant was to give up possession of the land within 15 days' time. It is said that there was a collection of men at the mosque on the afternoon of the 15th May, and again on the morning of the 16th May, for the purpose of resisting the execution of the decree and the apprehended demolition of the mosque, and that on the latter date the crowd, seeing some municipal sweepers or dhangars standing on the mounds of earth in front of the mosque, and also a few police officers, who had apparently come to enquire into the cause of the assemblage, and apprehending that they had come to demolish the mosque, attacked the dhangars and beat them, and also chased away the police. Further police then came up, and they endeavoured to disperse the assembly, but they too were beaten back. The Commissioner and Deputy Commissioner of Police with further reinforcements subsequently arrived, the crowd all the time gradually increasing till it swelled to about 2,000 men, and repeated attempts were made to disperse them. The police were, however, repeatedly driven back with blows of lathies and showers of pieces of brick and stone until about 2½ o'clock P. M., when a final attack was made in two bodies and the assembly was at last broken up and dispersed.

These are the alleged facts of the case; and the following charges have been drawn up against the accused:—

(1) A charge of culpable homicide not amounting to murder under section 304, Penal Code, read in connection with section 149, Penal Code.

(2) A charge under sections 333 and 149, Penal Code—that is, of having been members of an unlawful assembly in prosecution of the common object of which, *viz.*, (1) in resisting the execution of the decree obtained by Suresh Chandra Deb, or (2) in resisting the efforts of the police to disperse the unlawful assembly, grievous hurt was caused to public servants, *viz.*, police officers, engaged in the discharge of their duty as such, or to deter them from discharging their duty as such, or in consequence of something done by them in discharge of their duty as such; (3) under sections 152 and 149, Penal Code, of having been members of an unlawful assembly in prosecution of the common objects of which, as aforesaid, the above-named public servants, who are members of the police force, were assaulted and obstructed in the discharge of their duties as such; and (4) under sections 148 and 149, Penal Code—that is, of having been members of an unlawful assembly in prosecution of the common objects of which, as aforesaid, the offence of rioting armed with deadly weapons was committed by one or other of the members of such assembly.

In explanation of these charges I need only say that it is alleged that in one of the attacks made upon the crowd with the view of dispersing them, a constable, named Rashdhari Singh, was knocked down and could not get away. He received such serious injuries that he died the same night. Hence it is said the offence of culpable homicide not amounting to murder was committed by one or other of the members of the assembly in prosecution of its common object or objects, and so under the provisions of section 149, Penal Code, all the members of the assembly are said to be liable to punishment under section 304, Penal Code.

Similarly, inasmuch as it is said grievous hurt was caused to Inspector Yasabuddin and other police officers and as the police are said to have been obstructed and assaulted in the discharge of their attempts to disperse the assembly, which it was their duty to do, and as rioting armed with deadly weapons was committed by one or other of the members of the assembly, all the members of the assembly are said to be liable under the provisions of section 149, Penal Code, to punishment under sections 333, 152, and 148, Penal Code.

I need only add here that you may convict the accused of all these offences, or of such of them as you consider established by the evidence against the accused, or even of any other offence which you think has been proved to have been committed by them, such as rioting under section 147, Penal Code. (Here the provisions of sections 344, 333, 152, 149, 148, 146 and 141 were briefly explained to the jury.)

Now turning to the evidence in the case, I would point out that the evidence for the prosecution may be divided into two classes—(1) general evidence as to the riot, and (2) evidence as to the part taken by individual accused persons in it.

Of the witnesses who give evidence of the first kind is Srinath Mitter, who says he sold the land which is the site of the mosque to Suresh Chandra Deb on the 22nd August 1889. The deed of sale is produced. Then he says that on the 15th May he saw near the

mosque a collection of Mahomedans, among whom were Aliyar and Amir. He asked them why they had collected, and they and others replied that they had collected for the purpose of resisting the demolition of the mosque by Suresh Chandra Deb. Aliyar also said that dhangars assisted by the police were coming to demolish the mosque. Next day about 7 o'clock A. M., he again saw Aliyar and warned him not to collect men as he had done on the previous day.

The next witness in chronological order is Suresh Chandra Deb, who proves the purchase of the land and his obtaining a decree against Aliyar on the 30th April. The decree has been produced. He says he made no attempt whatever to execute his decree or to eject Aliyar from the land.

Then Sub-Inspector Benod Behari Singh says that he and four other policemen went to Nikaripara about 11 o'clock A.M. on the 16th May. He saw about 200 men collected near the mosque with lathies in their hands. He also saw some dhangars there. He spoke to one of the crowd, who said that Suresh Chandra Deb had purchased the site of the mosque and was coming to break in down. The Muhammedan who spoke to him then joined the others, and they all rushed at the dhangars and beat some of them. They then turned on the police and chased them, but Benod Behari and his men took refuge in the house of Srinath Mitter. This witness' evidence is corroborated by constable Suraj Pal Singh, who proves that the man who spoke to Benod Behari was Aliyar; by two dhangars, Jagu and Kushal, who say they were merely looking on at the crowd when they were attacked and knocked down; by Abdul Latif, constable, and by Corporal Azijal Rahman.

The next event in the order of time is the coming to the spot of two police officers, named Srinath Pal and Yasabuddin, with a body of police from the Bortollah Thana. Yasabuddin went up to the opening in the wire fencing leading to the mosque. He expostulated with the men, but a cry of "Ya Husain" was raised; six men attacked and beat him, and one man struck him on the eye and knocked out his left eye-ball. Srinath Pal was also beaten and wounded. Corroborative evidence as to this incident by the day's drama is given by two residents of the neighbourhood, named Prosonno Kumar Ghosh and Narain Chunder Chunder, and by many police witnesses.

Then about 1 o'clock Mr. Lambert, the Commissioner of Police, and Mr. Bernard, the Deputy Commissioner, proceeded to the scene of the riot. They were accompanied or followed by Superintendent E. Robertson, Superintendent Johnstone, Inspector Sarat Chundra Bose, and others. By this time the numbers of the rioters had greatly increased. In the end there are said to have been about 2,000 men or more engaged in the riot. It is in evidence that flags were flying above the mosque, tom-toms beating, and cries of "*din*," "*din*," were heard. The rioters were stripped to the waist and had their dhoties tightly tied round their loins. Mr. Lambert went up to the opening in the fencing, Mr. Robertson being close to him, but he was driven back by a shower of pieces of brick. A forcible attempt to disperse the assembly was then made, but it was unsuccessful, and in it constable named Rashdhari Singh was struck down near the opening in the wire fencing and left behind in the retreat. This man received such serious injuries that he died the same night in hospital. Several other unsuccesful attempts to break up the assembly were made, but at last about 2½ o'clock the police advanced in two bodies, one of which proceeded along the Circular Road from Fariapukar Street, and the others, headed by Superintendent Johnstone, crossed the Circular Road, advanced up the lane opposite to Fariapukar Street, and then turning to the right worked its way through some houses and passed a soorkee mill to the west of the mosque, thus getting to the rear of the rioters. The efforts of these two bodies of men were successful, and after a hand-to-hand struggle of about two minutes, the crowd broke and began to run. The police then commenced to arrest the rioters. About 50 or 60 men were at once arrested. They were first collected on the west foot-path of the Circular Road. They were then taken across the road and made to sit on the eastern foot-path. About 24 men, who were more or less severely wounded, were at once sent to the Medical College Hospital in charge of Mahomed Ali Darogah, and it is said that these men were sent away before any search was made in the neighbouring huts. Two other wounded men were also sent from there to Hospital. Excluding these men, there were altogether 71 other rioters arrested and placed in charge of Inspector Sarat Chunder Bose. He took down their names in two batches: first the names of 57 men who were not wounded, and then the names of 14 men who were wounded. He could not get gharries there, so he took them all to the Shampukar thana, and thence subsequently despatched the 14 wounded men to the Medical College Hospital.

Some other persons were subsequently arrested in neighbouring huts, but none of them appeared to be wounded, except one man, who had a scratch on his nose. These facts are

deposed to by very many police officers, from Mr. Lambert, Mr. Bernard, and Superintendent Johnstone downwards. It seems quite unnecessary for me to particularize their names or to refer to their evidence in greater detail.

Now, with regard to the evidence implicating the 28 prisoners now before us, there is in the first place the evidence of Mahomed Ali Darogah, who took the 24 wounded men to the Medical College Hospital. According to the evidence of Sarat Chunder Bose, Mahomed Ali and Superintendent McCready (*see* evidence of Sarat Babu, page 218; Mahomed Ali, page 5; McCready, pages 89, 90, 104 and 105), these men were arrested from amongst the rioters and from the list of their names which Mahomed Ali wrote down in his pocket-book at Nikaripara before taking them to the Hospital, which Mr. Lambert himself says he saw him doing, it appears that of these 24 wounded men 14 are now before us. At all events the names of 14 of the present accused correspond with the names of 14 of these 24 wounded men. Their names are Sheikh Mosahib, Lattu Dhangar, Babu Nandan Ojha, Sheikh Sahibdin, Sheik Ishak, Sheik Bolaki, Sheikh Dinar, Sheikh Himmat Khan, Sheikh Sherali, Sheikh Fazil (*alias* Karim Baksh), Abdul Hakim, Sheikh Islam, Sheikh Aklu, and Joyram Sundi, whose name has, however, been written by Mahomed Ali, as Goyaram.

Then, according to Sarat Babu, two other wounded men were afterwards sent away from Nikaripara, and according to Mahomed Ali two others were brought to Hospital while he was there—one by a constable of the Bortollah Thana and one by a European sergeant. Their names are Jamiyat and Sheikh Mahomed. They apparently are Nos. 15 and 25 of the prisoners in the dock.

Then of the 14 wounded men taken by Babu Sarat Chunder Bose to the Shampukar Thana, and subsequently sent to hospital, and whose names he wrote down in his pocket-book on the eastern foot-path, the names of ten of them correspond with the names of ten of the prisoners now before us, *viz.*, Sheikh Rahim Baksh, Sheikh Abdul, Sheikh Salamat Ali, Sheikh Ali Ahmed, Sheikh Lal Mahomed, Sheikh Alijan, Sheikh Ghura, Sheikh Amir, Sheikh Hubba, and Sheikh Nunna Khan. You will remember that Mahomed Ali Darogah says that on arrival of these 14 men at the Medical College Hospital he recorded their names in his pocket-book, and these ten names have all been found entered therein. Sarat Babu also says that one man out of the 57 gave his name as Elahi. This name corresponds with the name of the accused No. 27.

Then there is the Medical College Hospital admission register, produced and proved by Gopal Chunder Ghosh, which shows that patients with names corresponding or nearly corresponding to the names of 26 of the prisoners now before us (the only difference being that the name of Salamat Ali has been entered as Seramat Ali)—that is to say, of all the prisoners except Elahi, Jao, and Jagru—were admitted into hospital on the night of the 16th in a more or less injured state.

Then there is the evidence of Dr. Daud Rahaman, Assistant Surgeon of the Medical College Hospital, who proves the transfer of 19 of the men admitted on the 16th to the police the following day. He also speaks of the admission into and discharge from the hospital of eight men, *viz.*, Jamiyat, Karim Baksh *alias* Fazil, Abdul Hakim, Aklu, Ishak, Nunna Khan, Mosahib, and Himmat. One of these, Nunna Khan, is one of the 19 transferred to the Police Hospital next day. He can also identify six of the prisoners now before us as having been in hospital under his charge, *viz.*, Dinar, who, he says, was one of those transferred to the Police Hospital, Abdul Hakim, Himmat Khan, Amir, Mosahib, and Ishak Ali.

Then there is the evidence of George Dean, a European constable, who says that on the 17th May he removed 19 men from the Medical College Hospital to the Police Hospital. He has produced the list he made of the names of these men. The names of 19 of the present prisoners appear in this list, *viz.*, Bolaki, Sheikh Dinar, Sheikh Sahibdin, Sheikh Sherali, Sheikh Islam, Sheikh Hubba, Sheikh Lal Mahomed, Sheikh Abdul, Sheikh Mahomed, Sheikh Alizan Khan, Nunna Khan, Sheikh Ali Mahomed, Sheikh Salamat, Sheikh Rahim Baksh, Sheikh Amir, Sheikh Ghura, Joyram Sundi, and Lattu Dhangar. The name of Bolaki has been entered in this list as Belati. This is a natural mistake for a European constable to make. But no person of the name of Belati is said to have been admitted at the Police Hospital, while a man of the name of Bolaki was admitted there.

Then there is the evidence of Dr. Akhai Kumar Pain, the Doctor of the Mirzapore Police Hospital, who says he received 19 men from Dean and gave him a receipt, which he proves. He gives the dates on which these men were discharged from hospital and made over to the police. He can of his own knowledge identify Dinar, Salamat Ali, Ali Mahomed, Amir, Lattu Dhangar, Lal Mahomed, Sherali, Abdul, Mahomed, Babu Nandan Ojha, Ghura, Rahim Baksh, Nunna Khan, Bolaki, Islam, Alijan Khan, Hubba, and Joyram Sundi, so that

you have not merely a correspondence of names between the names of those taken to and admitted into hospital and the names of the prisoners now before us, but there is as regards 22 of them positive testimony as to their being the identical persons. As regards the remaining four, whose names are Fazil (or Karim Baksh), Aklu Jamiyat, and Sahidin, there is in the circumstances a very strong presumption that they too are the same men.

Turning now to individual accused persons before us, the first is Mosahib. He apparently is one of the 24 wounded men taken to the Medical College Hospital on the 16th May. He has been identified by the witness Ram Logan Tewari (witness No. 22), who says he arrested him in the riot near the musjid, while fighting was going on. He had seen him throwing bricks and using his lathi. He had a bamboo in his hand when arrested, and was wounded. The witness says he saw Darogah Mahomed Ali ask this accused his name: then he wrote something and put him into a gharry. The witness picked him out from amidst some syces and coachmen at the Police Office about 20 or 25 days after the riot. The hospital admission register shows that a man of this name was admitted on the 16th. Dr. Daud Rahman says this man was admitted into the Medical College Hopsital on the 16th May, and discharged and made over to the custody of the police on the 10th June. Dr. Daud Rahman identifies him himself.

The second accused is Lattu Dhangar. He is said to be one of the 24 men taken to the Medical College Hospital that night, and subsequently removed by Dean. He has been identified by two witnesses, Babu Sarat Chunder Bose (No. 17), and Ram Sakal Dhobi, constable (No. 26), as having taken part in the riot. Sarat Chunder Bose says he saw him in the riot beating the police. Ram Sakal Dhobi says he saw him in the riot throwing bricks. He arrested him to the west of the mosque with a lathi in his hand. He was then wounded on the head. He saw him put into a gharry and taken away. The Medical College Hospital register shows that a man of this name was admitted on the 16th. His admission into the Police Hospital and discharge on the 26th May are deposed to by Dr. Akhai Kumar Pain, who identifies him.

Babu Nandan Ojha, accused No. 3, is said to be one of the 24 admitted into the College Hospital on the 16th, and subsequently removed to the Police Hospital by Dean. He is said by Abdul Latif (witness No. 67) to have been one of the men who beat Rashdhari Singh. No doubt, as has been pointed out to you, the force of the evidence of this witness is weakened by the fact that in this Court he has identified three men whom he did not identify before the Magistrate. Dr. Akhai Kumar Pain proves that this accused was in the Mirzapore Hospital from the 17th May to the 1st June, when he was made over to the police. He identifies him himself.

The fourth accused is Sahibdin. He apparently is one of the 24 men taken to the Medical College Hospital and subsequently removed by Dean. He has been identified by Bharat Paure (witness No. 39), who says he saw him with a lathi in his hand and throwing bricks, one of which hit the witness. He arrested him near the mosque, and the accused then had a wound on his head. Abdul Latif (No. 67), too, says he saw Sahibdin throwing bricks at the police and beating them. The Medical College Hospital register shows the admission of a man of this name on the 16th. According to Dr. Akhai Kumar Pain, he was discharged from the Mirzapore Hospital on the 3rd June. The plea of *alibi* has been set up on behalf of this accused. He is said by two witnesses, Gour Mohun Mandal and Kedar Nath Chackerburti, to have been working on a house of the latter up to 3 o'clock P. M. on the day of the riot. I will further allude to this evidence later on.

The fifth accused is Ishak. He is said to be one of the 24 taken to the Medical College Hospital that night. He has been identified by Mohan Gwala (witness No. 23), head constable of the Reserve, who says he saw him throwing bricks and beating with a lathi. He gave him to Mahomed Ali, who took him away in a gharry. He subsequently identified him at Lal Bazar, inside the Police Office. The Medical College Hospital register shows the admission of a man of this name on the 16th. Dr. Daud Rahman, too, says he was admitted to hospital on the 16th May, and discharged on the 9th June. He can identify him as one of his patients.

The sixth accused is Bolaki. He is one of the 24 said to have been taken to the Medical College Hospital that night. He has been identified by Ram Tahal Kurmi (No. 24), who says he saw him throwing bricks and beating with a lathi. One of the blows dealt by him fell on the witness' right leg. He saw him subsequently taken to the west foot-path. He has also been identified by Abdul Latif (No. 67) as one of the rioters, but he did not identify him in the Magistrate's Court. He has identified him here for the first time. According to Dr. Akhai Kumar Pain, this accused was in the Mirzapore Hospital up to the 3rd June, and he identifies him himself.

The seventh accused is Sheikh Dinar. A man of this name was taken to the Medical College Hospital that night and subsequently removed by Dean. He has been identified by Ram Narain Misra (No. 34), who says he arrested him on the railway line. He had a lathi in his hand. Ram Narain Misra saw him throwing bricks and beating the police. This accused has wounds on his head and back when arrested, and the Medical College Hospital register shows that a man of this name was admitted on the 16th. According to Dr. Akhai Kumar Pain, he was in the Police Hospital till the 3rd June. He has been identified by both Dr. Daud Rahman and Dr. Akhai Kumar Pain.

The eighth accused is Joyram Sundi. A man of the name of Goyaram is amongst the 24 men taken to hospital that night, but a man of the name of Joyram was subsequently removed by Dean on the 17th May. This accused has been identified by Constable Mullick Nur Hossain (No. 35), who says this accused beat him with a danda on the right arm and left leg. The witness hit him on the head and pushed him down and wounded him. It appears that in his deposition before the Magistrate it is recorded that this witness said that he (witness) had been struck on the right leg. This may be due to a mistake either on the part of the Magistrate or of the witness, but most probably to that of the former, for the witness would not be likely to make a mistake on this point. The Medical College Hospital register shows the admission of a man of this name on the 16th, and Dr. Akhai Kumar Pain says this accused was in the Police Hospital up to the 9th June, and he identifies him.

The ninth accused is Himmat Khan. This man was one of the 24 taken to the Medical College Hospital on the night of the riot. He has been identified by four witnesses, *viz.*, Yasabuddin (19), Ram Doyal Bari (29), Bhogbat Dhobi (30), and Abdul Latif (67). Yasabuddin identifies him as one of the six men who struck him that day. He says Himmat Khan gave him three or four blows. This witness appears to me entitled to much credit. He has suffered severely in the riot. His left eye-ball was knocked out in the early part of the day. He had to be removed at hospital. To my mind, Yasabuddin gave his evidence most simply and clearly. Then Constable Ram Doyal Bari says he saw this accused brandishing a *garan* stick in the riot. He aimed a blow at him. The witness arrested him on the east foot-path. The accused had then a wound on the head. He has also been identified by Bhogbat Dhobi (30), a man who suffered very severely in the riot. He was wounded on the head, had his right arm fractured, and has been in the Medical College Hospital for a month. This witness says the accused Himmat and two others were brought to the hospital one night and placed in beds next to him. Himmat was placed in the bed next but one to him. He was ill and in pain hen, and did not look particularly at the men that night. But next morning he identified Himmat Khan as one of the rioters who had beaten him in spite of his remonstrances. Abdul Latif has also identified him as one of the rioters, but the force of his evidence is weakened by the fact that he did not identify him in the Magistrate's Court. The Medical College Hospital register shows the admission of a man of this name into hospital on the 16th. Dr. Daud Rahman says he was in hospital up to the 15th June. He identifies him.

The tenth accused is Sheikh Sherali. A man of this name was one of the 24 taken to College Hospital by Mahomed Ali, and was subsequently removed by Dean. He has been identified by Muni Singh (28), who says he saw him knock down a European Sergeant. He arrested him on the west side of the mosque and seized him from behind. This accused had a wound on the back of his head. The witness subsequently picked him out from 10 or 15 others at the Police Office. The Medical College Hospital register shows the admission on the 16th of a man of this name. Dr. Akhai Kumar Pain says he was discharged from the Police Hospital on the 28th May. He identifies him.

The 11th accused is Sheik Fazil *alias* Karim Baksh. He apparently is one of the 24 taken to the Medical College Hospital by Mahomed Ali. He has been identified by Choborja Singh (No. 36), who says he arrested him four paces to the south of the mosque. The accused threw a bit of brick at the witness and hit him under the right eye. He was going to strike him with a lathi when the witness seized him. The witness also heard this accused tell Sarat Babu his name was Fazil. The Medical College register shows the admission on the 16th of a man of this name. Dr. Daud Rahman says he was in hospital up to the 25th May.

The 12th accused is Abdul Hakim. He apparently is one of the 24 taken to the Medical College Hospital that night. He has been identified by Shibram Kahar (No. 37), who says he saw him throwing bricks. He had a lathi in his hand. This witness arrested him close to the mosque. The accused had a wound over his left ribs. This witness admits that by mistake he told the Magistrate that Sarat Babu wrote down this accused's name which was not really the case. The Medical College register shows the admission of a man of this name on

the 16th. Dr. Daud Rahman says he was discharged from hospital on the 27th May. He identifies him himself.

The 13th accused is Sheikh Islam. He is said to be one of the 24 men taken to the Medical College Hospital by Mahomed Ali, and one of the 19 subsequently removed by Dean. He has been identified by Ramjan Khan (38), who says he saw him waving a lathi and throwing bricks. He arrested him two to four paces west of the opening in the wire fencing. Abdul Latif also says this accused was one of the rioters, but he did not identify him before the Magistrate. He identifies him here for the first time. The Medical College register shows the admission of a man of this name. According to Dr. Akhai Kumar Pain, he was in hospital up to the 3rd June, and he identifies him.

The 14th accused is Sheikh Aklu. A man of this name was one of the 24 taken to Hospital by Mahomed Ali, Darogah. He has been identified by Juggo Mohan Singh (witness No. 31), who says that the accused struck him, and when he arrested him he had a wound on his head and under his eye. The Medical College register shows the admission of a man of this name. Dr. Daud Rahman says he was discharged from the Medical College Hospital on the 1st June.

The 15th accused is Jamiyat. He was arrested by Abdullah Khan (No. 33), who says he seized him on the east of the foot-path and west of the mosque. He was throwing bricks and had a lathi in his hand. He had wounds on his back, ear, and head. He made him over to a constable of the Bortollah Thana. Chitro Khan (No. 32), says he is the constable to whom Jamiyat was made over by Abdullah. The accused had then a wound on his head and his right ear was cut. He took him to the Bortollah Thana, and afterwards to the Medical College Hospital. No doubt there are discrepancies on certain points in the statements of Chitro Khan and Abdullah. They have been brought to your notice by the learned counsel for the prisoner. If you think they are material, they of course throw discredit on their testimony. Chitro Khan is, however, corroborated by Sarat Bose (*see* page 188) and by Mahomed Ali, Darogah, who entered the name of this accused in his note-book on his being brought to Hospital (*see* his evidence, page 9). He is further identified by Sergeant Melville, who says that while he was on one of the mounds, he saw this man, who was also on the mound, rush at a native constable with a stick in his hand. The hospital admission register shows the admission of a man of this name, and Dr. Daul Rahman says he was discharged from hospital on the 25th May.

The 16th accused is Sheikh Rahim Baksh. This is said to be one of the 14 wounded men taken to the Shampukar Thana by Sarat Bose, and thence sent to the Medical College Hospital the same night (*see* the evidence of Mahomed Ali, page 11). He was subsequently removed from there by Dean. He has been identified by Soudagar Singh (42), who arrested him to the south-west of the mosque. This accused is said to have had wounds on his left arm and head. The accused struck at the witness, knocked the baton out of his hand, and hurt his fingers. This witness had at first some difficulty in recognizing him in the dock, and had to tell him twice to brush back his hair, before he could swear to his identity. But he has explained that his hair is now comparatively long, and that at the time of the riot his hair was cropped close to his head. It is not, I think, to be wondered at that in these circumstances the witness had at first some difficulty in identifying him. The Medical College register shows the admission of a man of this name. Dr. Akhai Kumar Pain says this accused was discharged from hospital on the 3rd June. He identifies him himself.

The 17th accused is Sheikh Abdul. A man of this name was one of the 14 men taken to the Shampukar Thana; thence to the Medical College Hospital, and subsequently removed by Dean. He has been identified by Bhaglu Kurmi (No. 41), who arrested him east of the railway line and west of the mosque. The witness says the accused struck him with a lathi on the right knee, shoulder, and forearm. Ajudhya Ram (45) saw him beating at the time Yasabuddin was beaten. He says he also saw him use his lathi at the time of the fourth attack, and saw him again at the Police Office 10 or 12 days after the riot, when he picked him out from among 10 or 12 men. The Medical College register shows the admission of a man of this name. Dr. Akhai Kumar Pain says Abdul was discharged from the Police Hospital on the 1st June. He identifies him.

The 18th accused is Sheikh Salamat Ali. He apparently is one of the 14 taken to the Shampukar Thana by Sarat Bose, and thence removed to the Medical College Hospital. He was subsequently removed from there by Dean. He has been identified by Oojeer (No. 43), who says he arrested him on the big road. He had previously seen him beating Yasabuddin, Sankar Singh, and Abdul Ghani. This witness admits that when he was in the Magistrate's Court he at first identified another man as Salamat, but he says he corrected himself immediately.

This is a slip which might naturally occur, and though it may weaken, it does not necessarily entirely destroy, the force of this witness' evidence. The Medical College register shows a man of the name of Seramat Ali (which may be a clerical error for Salamat Ali) was admitted on the 16th. According to Dr. Akhai Kumar Pain, Salamat Ali was discharged from the Police Hospital on the 15th June. He identifies him.

The 19th accused is Sheikh Ali Ahmed, or Mahomed. A man of this name was one of the 14 men taken to the Shampukar Thana, and thence removed to the Medical College Hospital. He was subsequently taken away from there by Dean. He has been identified by Gobardhan Mahto (No. 44), who says he saw him beating Sankar Singh, and that he had a lathi in his hand when he arrested him. This witness had at first some difficulty in recognizing the prisoner, and had to examine his hands, on one of which it is said there is a mark of a slight wound, before he could be certain of him. The witness says the accused had a wound on his hand when he arrested him. The Medical College Hospital register shows that a man of this name was admitted on the 16th. According to Dr Akhai Kumar Pain, Ali Mahomed was discharged from hospital on the 15th June. He identifies him.

The 20th accused is Sheikh Lal Mahomed. He appears to be one of the 14 men taken to the Shampukar Thana, and thence to the Medical College Hospital. He was removed from thence by Dean. He has been identified by Bhaglu Paure, a constable, who was wounded in the third attack. He says this accused, Lal Mahomed, was the man who wounded him. He says a European Sergeant helped him to arrest him, and he identified Sergeant Hall (who was brought into Court) as the sergeant who helped him. Sergeant Hall, however, says he arrested Lal Mahomed. He says Lal Mahomed struck him with a bamboo on the helmet, upon which he seized him and made him over to the preceding witness. There is thus a discrepancy between the statements of these two witnesses as to the person who actually arrested the accused. This does not seem to me to necessarily afford ground for doubting as to the identity of this prisoner. The discrepancy may be due to a desire on the part of one of these two witnesses to exaggerate the part he took in arresting this accused. The Medical College register shows the admission on the 16th of a man of this name Dr. Akhai Kumar Pain says he was in the Mirzapore Hospital up to the 28th May, and identifies him.

The 21st accused is Sheikh Alijan. He appears to have been one of the 14 wounded men taken to the Shampukar Thana, and thence to the Medical College Hospital. He was from there removed by Dean. He has been identified by Saligram Koer, who said that when he arrested him he had a lathi in one hand and bricks in the other. The witness says the accused hit him on the right wrist with a *garan* stick. The witness, however, said he heard this accused say to Sarat Babu that his name was Ramjan. This fact may certainly give rise to doubt as to whether this witness has not made a mistake about this accused. However, this accused is also identified by Abdul Latif, who says he saw him taking part in the riot. He has been further identified by Najir Hossain (68), who says he had a wound on his head and saw him put into a gharry. On this point this witness appears to have been mistaken, for Alijan is not one of the 24 said to have been put into gharries and taken direct to hospital. According to the Medical College admission register, a man of this name was admitted on the 16th. Dr. Akhai Kumar Pain says Alijan was discharged from hospital on the 26th May. He identifies him.

The 22nd accused is Sheikh Ghura. He is apparently one of the 14 wounded men taken to the Shampukar Thana, and thence to the Medical College, whence he was removed by Dean. The witness Sajada Tewari says this accused hit him on the right ankle with a stick. He then arrested him on the east side of the wire fencing and about one pace from it. The witness says he heard this accused give his name to Sarat Babu as Sheikh Ghura. This accused has been further indentified by a witness named Sergeant Wady. He says he saw this accused in both attacks. He saw him using a stick in the last attack. He saw him both before and after arrest, and was quite close to him when he was put into a gharry and taken to hospital. This, however, is evidently not true, for no doubt this accused is not one of the men put into gharries. This no doubt throws discredit on the evidence of this witness. The Medical College register shows the admission of a man of this name on the 16th. According to Dr. Akhai Kumar Pain, Sheikh Ghura was discharged from the Police Hospital on the 1st June. He identifies him.

The 23rd accused is Sheikh Amir. He apparently is one of the 14 men said to have been taken to the Shampukar Thana. He was removed from the Medical College Hospital by Dean. This accused has been identified by Bans Gopal Dhobi (51), who says he arrested him close to the mosque but to the west of it and near the mound of earth. This witness says he was wounded on the head, left arm and back, and was hit with a brick on the right knee. This accused was

the man who hit him with the brick. The accused was wounded when arrested. He had his head cut open, which he tied up with his pugri. It is clear, however, that this witness has made a mistake in saying that he saw this man put into a gharry, for this does not seem to have been the case. The Medical College register shows the admission of a man of this name. Dr. Akhai Kumar Pain says Amir was discharged from hospital on the 15th June. Drs. Daud Rahman and Akhai Kumar Pain both identify this man.

The 24th accused, Sheikh Hubba, is also apparently one of the 14 men said to have been taken to the Shampukar Thana. He was subsequently removed from the Medical College Hospital by Dean. He has been identified by Ram Avatar Singh (witness No. 52), who says he arrested him to the west of the mosque. He saw him using his stick and throwing bricks. This accused struck the witness twice and had a wound on his back. He saw him about 20 or 22 days afterwards at the Police Office. This accused is also identified by Abdul Latif (No. 67). The Medical College register shows that a man of this name was admitted on the 16th. According to Dr. Akhai Kumar Pain, he was discharged from his hospital on the 9th June. Dr. Akhai Kumar Pain identifies him.

The 25th accused is Sheik Mahomed. He is said to have been taken from the Circular Road by the European constable Beecher (*see* the evidence of Sarat Bose, page 188). His admission into hospital the same night is proved by Darogah Mahomed Ali (*see* his evidence, page 10). He is identified as having taken part in the riot by Sarat Chunder Bose, who says he saw him beating a policeman, and he then had a black *lungi* of. He has also been identified by Sergeant Wady, who, however, has evidently not stated the truth in saying he saw him put into a gharry. The Medical College Hospital register shows that a man of this name was admitted on the 16th. The evidence of Dr. Akhai Kumar Pain shows that Sheikh Mahomed was discharged from hospital on the 1st June, and he identifies the prisoner before us as the same man. A witness maned Fattehdin has been cited on behalf of this man. I will allude to his evidence later on.

The 26th accused is Sheikh Nunna Khan. He appears to be one of the 14 wounded men taken to Shampukar Thana and removed to the Medical College Hospital the same night. He was subsequently removed by Dean. He is identified by Bharat Paure (No. 39) as having struck Mr. Merriman with a brick on the side of the head. Superintendent Johnstone, you will remember, says that Mr. Merriman appeared to him to have been so struck (*see* Johnstone's evidence, page 110). This accused was also wrongly identified in this Court by the witness Tobarak Khan; but this witness admittedly made a mistake on this point. His evidence as to Nunna Khan should therefore be disregarded. This accused is, however, identified by Superintendent Merriman himself. Superintendent Merriman recognizes him as a man who struck him on the helmet with a stick, which he took from him. He arrested him himself in the last attack. He not only knows the man, but remembers his name, for he wrote it down on his shirt sleeve when the accused gave it. This accused has further been identified by Shankar Singh, the Head Constable, who received such serious injuries at the same time as Yasabuddin. He says that Nunna Khan struck him with a stick on the right hand and then gave him the first blow on the side of his head, which knocked him down senseless. The Medical College register shows the admission of a man of this name. Both Akhai Kumar Pain and Dr. Daud Rahman give evidence about this man. The latter says he was discharged from the Medical College Hospital and transferred to the Police Hospital, and the former says he was discharged from the Police Hospital on the 3rd June. The latter identifies him.

The 27th accused was Sheikh Elahi. But the evidence against him being insufficient, he has already been acquitted.

The 28th and 29th accused are Jagru and Jao. They were not arrested at the riot, but afterwards. They have, however, been identified by Abdul Latif, Karim Baksh, and Najir Hossain, who say they saw them taking an active part in the riot. Abdul Latif says he saw Jao beating Rashdhari Singh. These witnesses further say that they knew these accused for several years previously, so are well able to identify them. The plea of *alibi* has been advanced on behalf of Jao, and three witnesses have appeared, who swear that on the day of the riot he was all day in their company at Chitpore. I will allude to this evidence later on.

Now, such is the evidence for the prosecution, and such is the evidence against each individual accused. The 29 accused persons all plead not guilty. They have made no statements in the Lower Court, and they have made none here: most of them have said that their Counsel will speak for them.

Eight witnesses in all have been examined on their behalf. One of them, Benod Behari Mukherji, is a medical practitioner, who says that after the last charge made by the police he saw one man arrested, who had been doing nothing but stand in front of his hut and prevent some women from coming out. He cannot, however, identify any of the present accused as

being that man. Then he says he saw another man arrested, who was released on his explaining that he was a Hindu. Finally, this witness says that at the time of the last charge the spectators and rioters were all mixed up together. But on being further questioned, this witness admitted that he had no means of distinguishing spectators from rioters, except that the former had no sticks in their hands and ran away on being charged. This does not seem to be a sufficient reason for saying that the men who ran away were only spectators. They may have been rioting previously and have laid down their sticks, or they may have been throwing stones. The witness further admitted that at the time of the last charge there was a body of 200 or 300 police between him and the mixed body of rioters and spectators, so that he could not have been well able to see what the latter did.

Then two witnesses, Gour Mohan Mundal and Kedar Nath Chuckerburtti, have sworn that Sahibdin was working at a house belonging to the sister of the latter up to 3 o'clock P.M. on the 3rd Jeysht. They profess to refresh their memory from two books—one a hatchita and the other a khatta —neither of which, however, contains any entry of the name of Sahibdin having himself worked at the house that day. The entry in the hatchita admittedly was not made till the 7th Jeysht, or four days after the occurrence.

Then four witnesses—Dino Batyabal, Ishor Ghosh, Kartik Kukri, and Bholanath Haldar —say they saw Sheikh Jao at Chitpore on the 3rd Jeysht. There is this discrepancy between their statements, that while Dino Batyabal, Kartik Kukri, and Bholanath Haldar say they were all three together all day, Ishor Ghosh says he saw Dino Batyabal accompanied by a gwala and by no one else.

Then a witness, Futtehdin, says he saw Mahomed on the day on which he heard of the riot, about 3 o'clock P.M. He says he thinks this was a Saturday, but he can give no further information as to the date on which he saw Mahomed. He says, too, that this shop of Mahomed is within 100 paces of Nikaripara.

This is all the evidence for the accused. After examining these eight witnesses, the learned Counsel for the accused said he would examine no more.

Now, gentlemen, such is the evidence on both sides, and it is for you to say whether you believe it or not.

It seems to me that if you believe this evidence, you can have no doubt that a body of Mahomedans did assemble on the morning of the 16th May for the purpose of resisting an apprehended attempt to demolish the mosque and eject them from the land leased to Aliyar; and that, seeing the dhangars and the police appear upon the spots at the same time, it was thought that they had come to carry into execution the terms of Suresh Chandra Deb's decree, and so, excited by their religious feelings, the rioters attacked them. Subsequently, when the police endeavoured by force to disperse them, as the police were lawfully entitled by section 127, Criminal Procedure Code, to do, they gathered in gradually increasing numbers to resist them, and did successfully resist them, until eventually they were overpowered and broken up.

Now, as I have said, it is for you to say whether you believe the evidence or not, and you are entitled to come to any conclusion on this point that you think fit. But it would seem to me that the evidence as to the occurrence of a riot is really overwhelming consisting as it does of the evidence of both European and Native police officers, some of the highest rank as well of other persons entirely unconnected with the police, and of one witness for the defence, Benode Behary Mukherji. It has been pointed out to you, and no doubt it is the case, that there are many discrepancies in the statements of many of the police officers, particularly as to when and where the names of the accused were recorded, whether on the east or west footpath, and whether the names of the witnesses also were written down, and so forth. But you must, in the first place, remember that a considerable time has elapsed since the occurrence, and the witnesses' memory is consequently naturally impaired. Further, I may say, I think that a riot is not like a game of chess, in which the pieces are placed in certain positions and remain there until they are moved. A body of rioters, or any crowd of men, is more like the sea, which is in perpetual motion, and which presents different aspects to observers at different moments of time. It may well be, therefore, that the position of such a body may be differently described by different witnesses. Moreover, though some of the witnesses for the prosecution are educated men, many of them are illiterate up-country men, who have been subjected to a severe and minute cross-examination, lasting in some instances for hours. Such persons cannot be expected to be other than indifferent observers of what took place around them. They are also not persons gifted with powers of thinking and expressing themselves clearly; and, further, it must be remembered that persons engaged in a fight cannot have their eyes everywhere and see everything that was seen, or see things in

exactly the same way as they were seen by others. Of course, if you totally disbelieve the evidence of all the witnesses who swear as to the occurrence of the riot, the whole case falls to the ground; but if you believe that they give a substantially true account, as accurate as possible in the circumstances, of what took place at Nikaripara on the 16th May, and if you believe that the origin of the assembly and incidents of the day were in the main as described by these witnesses, then it would seem to me that you cannot but come to the conclusion that there was an unlawful assembly as alleged, and that its objects were unlawful objects, as stated in the charges.

The rioters, if there was a riot, had no right to collect, in the first instance, in a body of more than five persons to resist by force the execution of a Civil Court decree, and they had certainly no right subsequently to remain on the ground and to collect in still greater numbers to resist the efforts of the police to cause them to disperse. As I have already said, under section 127 of the Criminal Procedure Code, the police had a right, and it was their duty which they in no way exceeded, to disperse the assembly and to use force for the purpose of effecting that object.

Then, if you believe the evidence, there can be no doubt that a constable named Rashdhari Singh died in consequence of injuries received in the riot in such circumstances as to render any persons guilty of causing his death liable to be convicted of the offence of culpable homicide not amounting to murder. It may be said, indeed, that the offence of murder was committed in causing the death of Rashdhari Singh; but a charge under section 304, Penal Code, only has been drawn up against the accused, and, therefore, it is useless to consider this point. There can be no doubt, however, that whoever attacked and wounded Rashdhari Singh must have done so with the intention of causing him such grievous bodily hurt as was likely to cause death, or at least with the knowledge that the attack upon him was likely to cause his death. If, then, you think that the attack upon him was made in prosecution of either of the two unlawful objects which are said to have been the objects of the assembly, or was such an attack as the members of the unlawful assembly know to be likely to be committed in prosecution of those common objects, then it is clear that under the provisions of section 149, Penal Code, all the members of the assembly proved to have then been present are guilty of an offence under section 304. The difficulty, and it is a serious one, is to determine which of the members of the assembly were than actually present in prosecution of its common object or objects. On this point, however, there is the evidence of Yasabuddin, Oojeer, Gobardhan, Ajudhya Ram, Sankar Singh, Abdul Latif, Karim Baksh, and Najir Hossain, which, if believed, shows that Himmat Khan, Salamat Ali, Mahomed, Abdul, Nunna Khan, Babu Nandan Ojha, Jao, and Jagru were all members of the assembly previous to the time when Rashdhari Singh was beaten. There is also the evidence of Abdul Latif, but of Abdul Latif only, that Babu Nandan Ojha and Jao actually took part in the attack on Rashdhari Singh.

Then it is quite clear that grievous hurt was caused to Yasabuddin, for his eye-ball was knocked out and he has lost the sight of one eye. Grievous hurt was also caused to Srinath Pal, Superintendent E. Robertson, Sankar Singh, Bhogbat Dhobi, Salamat Khan, and Sahib Ali Khan, all of whom were unable to follow their ordinary avocations for more than 20 days; while Sankar Singh had certain nasal bones fractured, Bhogbat Dhobi had his right ulna fractured, and Salamat Khan had both bones of his fore-arm fractured, and these injuries amount to grievous hurt. If, then, you think that they were so wounded in prosecution of either of the alleged objects of the assembly, or if you think that the members of the unlawfull assembly knew that such wounds were likely to be inflicted in prosecution of the object or objects of assembly, then all proved to have been then present are liable to punishment under section 333, and, so too for similar reasons all such persons may be held guilty of offences and liable to punishment under sections 152 and 148, Penal Code. All members of the assembly may also be held guilty of rioting under section 147, Penal Code.

Then, with regard to individual accused persons, it is my duty to tell you that, with the exception of Sheikh Elahi, who has already been acquitted, there is against all the others sufficient evidence to justify your convicting them as charged, or of such offence as you think established by the evidence against them. It is, of course, as I have said, for you to weigh the evidence against each individual prisoner, and come to a conclusion as to whether you can reply upon it. Much has been said, as I have already observed, as to discrepancies in the statements of the witnesses as to differences between their statements here and their statements before the Magistrate and at previous trials. These discrepancies have been pointed out to you at length, and have been commented on before you by the learned Counsel who have appeared on either side. I do not think it necessary for me in these circumstances to say anything further on this subject, except to remind you that

you should consider whether these discrepancies may not very naturally arise for the reasons, and may not be fairly accounted for in the ways, which I have already pointed out to you. If you think they cannot, then these discrepancies will certainly be ground for your distrusting the evidence of the witnesses in whose statements they occur. If, however, you think that they are merely such discrepancies as may naturally occur in the statements of illiterate witnesses giving their evidence after a very considerable lapse of time, and after being subjected to a severe and minute cross-examination, then of course they will not afford any ground for rejecting the evidence of these witnesses.

But it is an important fact, which you should duly consider, that, with the exception of Jao and Jagru, all the other persons now accused in this case appear to have been taken to the hospital that very night, and, as the medical evidence establishes, to have been more or less injured. This seems very strong corroborative evidence against them. They may of course have received the injuries they were suffering from in other ways than in the riot; but no attempt has been made to prove this, and even no plea to this effect has been advanced on behalf of any of the accused.

You will observe that three of the accused are Hindus, *viz.*, Baba Nandan Ojha, Lattu Dhangar, and Joyram Sundi. It no doubt does appear strange that Hindus should co-operate with a body of Mahomedan rioters. But it may be that they took part in the riot merely for the purpose of resisting the police. They may not have formed part of the assembly in the early part of the day, which collected for the purpose of resisting the apprehended demolition of the mosque. There is, however, direct evidence against all these Hindus. They appear to have all been wounded and taken to the Medical College Hospital that night, so there is certainly evidence to show that whatever their motives may have been, they took part in the riot of the 16th May.

In making up your minds as to the guilt or innocence of the accused, you will of course take into consideration the evidence for the defence that has been adduced on behalf of Sahibdin, Jao, and Mahomed. If this evidence leads you to the conclusion that these men did not take part in the riot, you should of course acquit them; and if you feel any reasonable doubts as to the guilt of these accused persons, or of any other of the accused, you should of course give them the benefit of these doubts and find them not guilty.

ALIPORE, } R. F. RAMPINI,
The 14th November 1891. } *Additional Sessions Judge.*

From H. W. C. CARNDUFF, Esq., Registrar of the High Court of Judicature at Fort William in Bengal, to the Secretary to the Government of India, Home Department,—No. 540, dated the 9th February 1891. No. 77.

Present:
The full Court.

I am directed to acknowledge the receipt of your letter No. 745, dated the 31st May 1890, in which the Government of India has asked for an expression of the views of this Court on certain specific points connected with the working of the system of Trial by Jury in the Lower Provinces of Bengal and Assam.

2. In reply I am to state, for the information of His Excellency the Governor General in Council, that the Judges have on more than one occasion discussed the important questions thus raised by the Government of India, but that, owing to considerable divergence of opinion among them, they have been unable to formulate any reply to this reference which would satisfactorily represent their views as a body. They have, therefore, resolved to adopt what seemed to them to be under the circumstances the only practicable course, and have directed me to forward the accompanying copies of the separate minutes noted on the margin, in which the subject under consideration has been dealt with by the individual members of the Court.

Minute recorded by the Honourable the Chief Justice.
" " " Mr. Justice Prinsep and concurred in by Mr. Justice Wilson.
" " " Mr. Justice Pigot, and
" " " Mr. Justice Macpherson.
" " " Mr Justice Tottenham.
Joint Minute recorded by { Mr. Justice Norris. / " " Ghose. / " " Banerjee.
Minute recorded by Mr. Justice Trevelyan.
" " " " Beverley.
" " " " Ameer Ali.
and concurred in by Mr. Justice O'Kinealy.

Minute by the Hon'ble the Chief Justice (Sir Comer Petheram) No. 78.

In the letter quoted above, the Judges of this Court are asked for an expression of their opinion—(1) as to how the system of Trial by Jury has worked in the Lower Provinces of Bengal and Assam; (2) as to its merits as a means for the repression of crime, and (3) as to what improvements, if any, are called for in its application.

2. As regards the first and second points raised by the Government of India, I am unwilling to express any opinion unfavourable to the existence of the system of Trial by Jury, as it is called in these Provinces, or as to its merits as a means for the repression of crime.

3. With reference to the remaining question as to whether any improvements in the application of the system under consideration suggest themselves, I am of opinion that some extension of the right of appeal in jury cases is desirable, but am not prepared to offer any further suggestions.

No. 79.

Minute by Mr. Justice Prinsep.

Our opinion has been asked on three points:—

(1) How the system of Trial by Jury has worked in the Lower Provinces and Assam;
(2) What opinion is entertained as to the merits as a means for the repression of crime; and
(3) What improvements, if any, are called for in its application.

I would reply thus:—

1. The system has not been altogether successful in its results, but it is capable of improvement and has been much benefitted by the power given by the Codes of 1872 and 1882 to a Sessions Judge of refraining to give effect to a verdict of which he may disapprove, and of obtaining the judgment of the High Court on the case.

2. It is impossible for us to express any opinion how far this system of trial has been the means for the repression of crime. This system of trial has not been extended throughout Bengal, nor has it been applied to every class of offence, and, therefore, its effect must be limited. It is, moreover, impossible to distinguish its effect in any districts in which it may be in operation, since the Magistrate's powers of punishment and repression of offences are so large that they must have a very appreciable influence in such a matter. I doubt, moreover, whether the mode of trial, to which he might subject himself, would have any deterring influence on the mind of a person about to commit an offence. The fear of the punishment prescribed by law would rather be present to his mind.

If it can be fairly said that Trial by Jury has any influence on crime in Bengal, I should say that the uncertainty which it imports into the administration of justice would certainly not be calculated to repress crime.

3. To give an answer to this necessitates some discussion and explanation.

The system of Trial by Jury outside Presidency towns was first introduced by the Code of Criminal Procedure, 1861, and was extended to some selected districts in Bengal, in regard to certain offences only, in 1862. By that law the verdicts were conclusive even on appeal, except on a point of law, and it was further provided that there might be a verdict by a majority provided that that majority was not a bare but an absolute majority of the jurors depending on the number of the persons constituting the jury. Thus, if the jury consisted of five, seven or nine persons, a majority of four, five or six, respectively, was necessary for a verdict (section 328). If the verdict was not unanimous or of such a majority of the jurors, a re-trial was necessary.

In consequence of numerous well-founded complaints of failure of justice, the Legislature, in the amended Code of 1872, altered the effect and also the constitution of the verdict of a jury. It provided (section 263) that if a Sessions Judge disagreed with the verdict, and considerd it necessary for the ends of justice that he should do so, he should not record judgment on that verdict, but should submit the case to the High Court. It further provided that the High Court should deal with a case so submitted as it would with an appeal convicting or acquitting the accused person on the facts as well as law on the charges regarding which the reference might have been made. At the same time, however, the Code of 1872 also enabled a Sessions Judge to receive and pass judgment on the verdict of *any* majority of the jurors, if he did not so disagree with it. The actual responsibility was thus taken from the jury and placed on the Sessions Judge and through him on the High Court. In appeal or revision, the verdict of a jury was final except on a point of law; but in a case submitted for confirmation of sentence of death, it was always open to the High Court to consider and find on the facts notwithstanding the verdict of a jury.

The Judges of the High Court, however, on any reference so made, refused to consider the case on its merits unless they were first shown that the verdict, which the Sessions Judge had refused to accept, was a perverse or unreasonable verdict, that is to say, they attached more weight to such a verdict than to the opinion of the Sessions Judge who had refused to accept it, because he considered it to be against the weight of evidence. The first case, I believe, in which this view of the law was not adopted, is the case of Empress *versus* Mukhan Kumar, I, Calcutta Law Reports, 275, decided on June 23rd, 1877, but the practice was not completely changed; it varied according to the inclinations of individual Judges.

The Code of 1882, Section 307, provided that if a Sessions Judge should disagree with the verdict so completely that he considerd it necessary for the ends of justice to submit the case to the High Court, he might refer the case to the High Court and abstain from passing judgment upon such verdict. It also provided that, in dealing with a case so submitted, the High Court may exercise any of the powers which it may exercise on an appeal; but it may acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it.

The practice in this High Court still varied. The matter was fully considered and discussed in the judgment delivered on 29th August 1887, in the case of Empress *versus* Itwari Saho, Indian Law Reports, XV, Calcutta, 269, but the practice is still unsettled.

I have followed the course of legislation, and of our practice at some length to show the difficulties under which Sessions Judges labour in dealing with cases in which they think that the verdicts are contrary to the weight of the evidence. I have strong grounds for knowing that this uncertainty prevents them from referring cases, and that consequently failures of justice not unfrequently occur. I can speak from my own experience as a Sessions Judge and also from cases brought to my notice since I have occupied a seat in the High Court. To set these difficulties at rest, if there is to be any legislation on the subject, I think that the terms of the law should be made more explicit and clear. My most recent experience as one of the Vacation Judges sitting with Wilson, J., is that there is little, if any, improvement in the verdicts of juries, especially in cases of homicide amounting to murder. Six referred cases were tried by the Vacation Bench, in none of which the verdict was accepted. Three of these were cases of murder, in one of which the jury were for acquittal, and in two others they returned verdicts only of culpable homicide of the lowest degree. The accused persons in all these cases were convicted by us of murder, the prisoner in one of the last mentioned cases being sentenced to death, the sentences in the other cases being of transportation for life, and in none of these cases could there be any doubt that the jury obstinately refused to convict of murder against the clearest evidence. In the other three cases tried regarding other offences, the verdicts were for acquittal. We convicted in all of these cases. It may also be stated that these six cases came from five different districts. My experience is in accordance with the opinion frequently expressed by the High Court, that in cases of homicide the jury are prone to acquit or take an unreasonably lenient view of the conduct of the accused, while in cases of offences against property they are too ready to convict on weak and doubtful evidence. For these reasons, I think that an amendment of the law is necessary to provide against failures of justice. I have already stated in what respect I would have the law amended as to the practice of the High Court.

I am also of opinion that the law should make it incumbent on every Sessions Judge to refer every case to the High Court in which he does not approve of, or agree with, the verdict of a jury. This is the opinion recently expressed by the Madras High Court in Empress *versus* Guruvadu and others, Indian Law Report, 13 Mad. 343.

I am opposed to the introduction of special juries. It would tend to deprive ordinary juries of their best men, and any one conversant with the constitution of juries in the mofussil knows how difficult it is to obtain what is recognised as a good jury. Moreover, there would be the same influences at work which have hitherto injuriously affected verdicts, while from the probable greater weight to be given to the verdict of a special jury, there would be greater disinclination to set such a verdict aside in cases referred to the High Court; for, if such weight is now attached to the verdict of an ordinary jury, considered by the Sessions Judge to be contrary to the weight of evidence, what chance would that officer have of obtaining the judgment of the High Court on the evidence, if he referred a case of a wrong verdict of a special jury? There would, in my opinion, be no security for a proper verdict against the influences I have mentioned, while the remedy allowed by law would be enforced with the greater difficulty. Cases of manifest failure of justice would consequently increase.

The law leaves with the Local Government discretion to fix the number of jurors within certain limits, and I do not suppose that if any valid reason were shown for increasing that

number, the present number would be retained. For my part I am aware of no objection hitherto made to the present number.

I can see no advantage of returning to the practice of an absolute majority of the jury to complete a verdict. The result would be retrials without any possible benefit, and with much inconvenience and loss of time to all concerned. All this seems to be unnecessary when such a verdict would be operative with the concurrence of the Sessions Judge, and when, as the law now provides, the case can be dealt with on its merits by the High Court, if the Sessions Judge thinks it necessary to refer it for the ends of justice.

I am also of opinion that the powers of appeal should be relaxed, and that there should be an appeal on the facts, at least against a verdict which is not an unanimous verdict, whether it be for conviction or acquittal.

The 19th December 1890. H. T. PRINSEP.

I agree generally in the conclusions arrived at by Prinsep, J.

The 31st January 1891. A. WILSON.

And I.

The 2nd February 1891. J. PIGOT.

And I.

The 6th February 1891. W. MACPHERSON.

No. 80. *Minute by Mr. Justice* TOTTENHAM.

The figures furnished by the Registrar for the five years from 1884 to 1889 show that in 325 cases out of the 1,708 tried by jury in Bengal and Assam, the Sessions Judges disapproved of the verdict, that is, in about 20 per cent. But only in 114 cases were references made to the High Court under section 307 of the Code of Criminal Procedure. In 211 cases, therefore, no attempt was made to remedy the failure of justice, which, in the opinion of the Sessions Judges, the juries occasioned. And in cases referred under section 307, this Court has shown a tendency to refuse to interfere with the verdicts, unless satisfied that they were altogether perverse or otherwise insupportable.

In particular districts the system has seemed to work well in the majority of cases tried: but, looking at the system as a whole, I do not think that the result as shewn by the figures are satisfactory.

The enactment of section 307 was itself a proof that the system could not be continued in the unrestricted form in which it was set going in the Code of 1862. And a jury system carried on under the restriction of section 307 has not, so far as I can see, any great advantage over the assessor system; while, on the other hand, it is to some extent anomalous and productive of inconvenience and of dissatisfaction.

2. As regards the merits of the system as a means for the repression of crime, I do not believe that *per se* it has any, *i. e.,* I do not believe that an intending criminal would be deterred by the knowledge that if detected he would be tried by a jury and not merely by a Judge with assessors. I do not suppose that his conduct would be influenced one way or the other by the probable mode of his trial.

3. The improvements called for in the application of the system are, I think, such as to reduce it still further towards the level of a trial with assessors only. For I think it is clear that there should be an appeal on the facts in all cases in which the jury are not unanimous; and in all cases in which the Judge differs from the Jury: and I believe that in capital cases it would be well to do away with the Trial by Jury in the Mofussil.

No. 81. *Minute dated 13th January 1891 by Mr. Justice* NORRIS, *Mr. Justice* GHOSE *and Mr. Justice* BANERJI.

The Government of India asks for an expression of our views on three points connected with the working of the jury system, namely—(1), how the system has worked in the Lower Provinces and Assam; (2) what opinion is entertained as to its merits as a means for the repression of crime; and (3) what improvements, if any, are called for in its application.

2. Upon the first point we are of opinion that the system has worked fairly well on the whole, a conclusion which is based upon statistics furnished to us by the Registrar of the High Court, and upon our individual experience, gathered from our having from time to time sat as members of the Criminal Bench.

3. From the statistics supplied to us it appears that there were 1,708 cases tried by jury in Bengal and Assam in the five years from 1885 to 1889. References were made to the High Court under Section 307 of the Code of Criminal Procedure in 114 of these cases, that is to say, in 6·67 per cent. In 63 of these references, that is to say, in 55·26 per cent. (or in 3·6 per cent. of the whole number of jury cases), the verdict of the jury was set aside. In 211 out of the above 1,708 cases, the Sessions Judges, although they disagreed with the jury, made no reference to the High Court under section 307. This, we think, we may well presume was owing to their not having so completely disagreed with the verdict of the jury as to lead them to consider "it necessary for the ends of justice to submit the case to the High Court." These facts and figures, we venture to think, warrant our saying that in our opinion the system has worked fairly well upon the whole.

4. The results of our experience lead us to the same conclusion. No doubt some of the references which have come before us have disclosed cases of verdicts which we could not but think were opposed to the weight of evidence, but their number was small; and the instances in which such verdicts were so entirely opposed to the weight of evidence as to justify their being looked upon as perverse were rare. Failure of justice, however, in such cases has been prevented by the operation of section 307 of the Code of Criminal Procedure, the provisions of which, as will be seen from the foregoing figures, the Sessions Judges avail themselves of as indeed it is their duty to do, where they consider it necessary for the ends of justice. We are unable to say to what causes verdicts opposed to the weight of evidence were preferable; they may have been due in some instances to prejudice on the part of the jury, or to their inability to grasp the numerous details of complicated cases. On the other hand, some of these verdicts may have been due to the Judge's charge being defective.

5. We are not sure that we rightly understand what the Government of India means in inviting an expression of the opinion we entertain "as to the merits of the jury system as a means for the repression of crime." If, as we suppose, it is intended to ask our opinion as to whether the system has favoured the escape of criminals, we should, putting aside exceptional instances, answer in the negative; but if we are asked whether in our opinion the system has been successful in obtaining the conviction of guilty persons, our answers would be in the affirmative. The system would probably occasionally fail in cases of murder but for the provisions of section 307 of the Code of Criminal Procedure. There can, we think, be little or no doubt that popular feeling in these Provinces is opposed to capital punishment, except for cases of revolting brutality, or such as, in addition to involving death, outrage the highest religious precepts; and, unless the evidence is absolutely clear and direct, the fear that an adverse verdict will be followed by a capital sentence does in some cases operate to induce a jury on insufficient grounds to acquit altogether, or to find a verdict of culpable homicide not amounting to murder. But the provisions of section 307 above alluded to, which we think are sufficiently explicit and clear, render the risk of a failure of justice in such cases almost inappreciable.

6. We think the Jury system would be improved by the adoption of the following suggestions, *viz.*:—

(*a*) That, where practicable, offences punishable with death, or any other offences which the Sessions Judge may direct to be so tried, should be tried by a special jury.

(*b*) That where practicable, the number of the jury should be seven, and that no verdict should be received unless concurred in by five out of the seven; that where the jury consists of five, no verdict should be received unless concurred in by four out of the five.

(*c*) That if the law as to receiving the verdict of a bare majority remains unaltered an appeal upon the facts (as well as that now allowed on the law) should be allowed against all *convictions* where the jury are not unanimous.

Minute by Mr. Justice TREVELYAN, *dated 19th January 1891.* No. 82.

I have had so little experience of the working of the jury system in the mofussil that it is difficult for me to express an opinion of any value on the questions referred to us.

What little I have seen, however, is sufficient to show me that in cases of conviction there should be an appeal as of right. In cases of acquittal the Judge should, I think, be compelled to refer whenever he differs from the jury.

No. 83. *Minute by Mr. Justice* BEVERLEY *dated the 18th December 1890.*

On the first question on which our opinion is asked by the Government of India, I have little to add to which I wrote in 1884. I am of opinion that the system of Trial by Jury in the mofussil has worked well on the whole, but that instances of wrong verdicts do occasionally occur, specially in certain classes of cases. I am also of opinion that section 307 of the Code of Criminal Procedure provides a wise and necessary safeguard against the miscarriage of justice in such cases, and I agree with Prinsep J., in thinking that the provisions of that section should be made more stringent.

2. As to the merits of the system as a means for the repression of crime, it seems to me that it is difficult to form an opinion. I should think it extremely improbable that a murderer or a dacoit before committing the offence would sit down to consider whether, in the event of his being apprehended, he would be tried by a Judge sitting with assessors, or by a Judge and jury. On the other hand, the employment of juries to try criminal cases does tend to disseminate a knowledge of the Criminal Law, and such extended knowledge, it may be presumed, must have a tendency to repress crime. A statistical test of the merits or demerits of the jury system as bearing upon the repression of crime might be afforded by a comparison of the statistics of heinous crime before and after the introduction of the system in 1862, or by a comparison of the statistics of such crime in jury districts and those districts in which the system has not been introduced. But any such statistical comparison would seem to be impracticable, and even if practicable, it would be by no means conclusive.

3. On the third point I agree with Prinsep, J., that it should be made compulsory on Sessions Judges, under section 307, to refer to the High Court every case in which the Judge is not prepared to accept the verdict of the jury, and that it should be distinctly laid down that it is the duty of the High Court, in such references, to determine the case on the merits in the same way as on an appeal from a sentence passed in a trial by a Sessions Judge with assessors. If this were done, I am of opinion that no change is required in the law of appeal.

4. I am opposed to the introduction of special juries into the mofussil, as well as to the proposal to increase the number of the jury.

No. 84. *Minute by Mr. Justice* AMEER ALI, *dated 16th January 1891.*

The three points on which the Government of India seeks the opinion of the Judges are the following:—

1st.—How the system has worked in the Lower Provinces and Assam?

2nd.—What opinion is entertained as to its merits as a means for the repression of crime?

3rd.—What improvements, if any, are called for in its application?

With reference to the first question, I am not in a position to express any opinion as a Judge, for I have not yet had an opportunity of sitting as a member of the Bench taking criminal cases. But from my experience at the Bar, in the course of which I had many opportunities of forming a conclusion as to the merits of the system of Trial by Jury, I am able to say that the system in question has not satisfactorily answered the object for which it was devised. As I understand the matter, Trial by Jury and Trial with Assessors were introduced as a means for the investigation of the real facts of a criminal case In certain districts juries were introduced, in other assessors, to assist the European Judges who were supposed to be unacquainted with the customs of the country, in the consideration of particular kinds of cases. These two systems were in substitution of the old system, under which English Judges were assisted by Mahommedan Muftis. At a very early stage the miscarriage of justice, which resulted from perverse verdicts of juries, led to the introduction, in the Criminal Procedure Code, of the provision which is now embodied in section 307 of Act X of 1882. In cases of homicide, even when the crime is of an atrocious character, Indian jurors are notoriously averse to bringing in a verdict which would subject the accused to capital punishment. In other cases, *e. g.*, dacoity, rape, etc., race-feelings and popular prejudices, besides other influences, play a great part. And in certain districts popular prejudices and race-feelings have, owing to a variety of circumstances, lately become more accentuated with the result that gross miscarriage of justcie has often been occasioned by Trials by Jury. The notion that section 307 supplies a corrective to the evil is not well-founded; for in the majority of cases in which Sessions Judges have formed a different conclusion as to the truth of a case,

they have refrained from making a reference, and this is borne out by the figures furnished by the Registrar for the five years from 1885-1899. This arises partly from the words of the section itself, which declares that when the Judge disagrees with the verdict of the jury *so completely* that he considers it necessary, for the ends of justice, to submit the case to the High Court, he shall do so, thus throwing a heavy responsibility upon the Judge; and partly from the fact that Sessions Judges are aware that, except in extreme cases, the High Court is loth to interfere with the verdict of a jury, and are natually averse to submit themselves to rebuffs. Section 307 affords no doubt some protection against the vagaries of jurors, but by no means to the extent which, in my opinion, is desirable. In certain kinds of cases conviction, in others, acquittal is a foregone conclusion. Verdicts are not arrived at upon the evidence, but upon prejudices and predilections and upon what is heard outside the Court. For these reasons I am of opinion that the system of Trial by Jury requires considerable " improvements in its application, in order to become an efficient agency in the investigation of facts.

2. As regards the second question, if I rightly apprehend its meaning, it is answered in the foregoing observations.

3. With reference to the third point, I would suggest, in order to safeguard the liberty of the subject as well as to meet the requirements of justice, that a right of appeal be given in every case from Trial by Jury. At present the accused has a right of appeal from a conviction arrived at in a jury-trial only on questions of law. There is no right of appeal on facts, and unless the Judge chooses to refer the case under section 307, the injury inflicted by an improper verdict upon a perverse view of the evidence is irremediable. The prosecution, too, is similarly fettered in the case of unjust acquittals. Having regard to the provisions of sections 307 and 309, I perceive no difference, excepting a barely sentimental one, between the position of jurors and assessors. Assessors are *prima facie* as well educated as jurors. In my experience in the profession I have found them as intelligent as the general run of Mofussil jurors. And it seems to me an anomaly that for the mere sake of a name, there should exist that vast distinction between Trials by Jurors and Trials with the aid of Assessors. Under the Procedure Code the accused has a right of appeal, both on facts and law, from a conviction arrived at with the aid of assessors; in cases of acquittal the Crown has a right of appeal. Why should not the law be the same in jury trials? Either section 307 is necessary or it is not. If it is necessary, then, so far as the right of appeal is concerned, the two systems should be assimilated. Of course in a Trial by Jury the Judge will have the benefit of the opinion of five men instead of two or three, and in case of an appeal from an acquittal, the prestige of the verdict of the jury will tell in favour of the accused in the High Court.

Minute by Mr. Justice O'KINEALY.

I concur in the opinion expressed by Mr. Justice Ameer Ali.

The 22nd January 1891.

From W. C. BENETT, Esq., Secretary to the Government of the North-Western Provinces and Oudh, to the Secretary to the Government of India, Home Department,—No. 307, dated the 2nd February 1891. No. 85.

I am directed to acknowledge the receipt of your letter No. 743, dated 31st May 1890, and in reply to the question as to how the system of trial by jury has worked in the North-Western Provinces, to forward, for the information of His Excellency the Governor General in Council, a printed copy of the opinions of the officers consulted on the subject.

2. As a means for the repression of crime, its principal, and perhaps sole, advantages over trial by assessors, is that jurors, if the lists are carefully prepared, are generally men of somewhat better status and intelligence. It has, moreover, this disadvantage that the verdict is final as to the fact, and is seldom, however questionable, interfered with by the High Court. In this connexion, I am to invite attention to the remarks in paragraph 9 of Mr. Elliot's and parragraph 2 of Mr. Porter's letter, though this view appears to be opposed to the experience recently gained at Benares. On the whole, the result of its trial during the past five years seems to be that the system has worked fairly well, and the figures show that the percentage of verdicts disapproved of is considerably less than in the case of trial by assessors. In 1886 the late Mr. McConaghey, whose experience both as Sessions Judge at Lucknow and as Inspector-General of Police is of exceptional value, observed: "The jury system on the whole has been a success, and the verdicts given have been honestly and thoughtfully worked out." During the whole period of its operation the percentage of verdicts disapproved of has been 11 in the North-Western Provinces and 2 in Oudh.

3. It cannot therefore, be said, except perhaps as regards "habituals" in the Allahabad District, that trial by jury has unduly favoured the escape of the criminal, and there is ample testimony that where intricate points are not involved assistance to the Judge has often been rendered by juries in appraising the value of the testimony of witnesses and their veracity, especially in cases where questions of native customs and habits of thought, regarding which jurors are often more conversant than the most experienced Judge, are in issue. On the other hand jurors are liable to be influenced by outside information and caste feelings; though in this respect, as is pointed out by the Chief Justice, juries are not much better in England than here. Much depends upon the Judge, who, if strong, can always influence the jury.

4. It is the opinion of His Honour the Lieutenant-Governor that the only change that can be recommended at present is the extension of the system to other towns; and inquiries are being made as to whether its introduction at Agra is desirable.

No. 86. From the Secretary to the Government of the North-Western Provinces and Oudh, to the Registrar, High Court of Judicature, North-Western Provinces,—No. $\frac{1467}{VI-598\text{-}B.}$, dated the 26th June 1890.

I am directed to forward five copies of letter No. 743, dated 31st May 1890, received from the Government of India, Home Department, regarding the working of the system of trial by jury, and to request that the Hon'ble Judges may be moved to favour the Lieutenant-Governor and Chief Commissioner with an expression of their opinion on the points raised in paragraph 2 of that letter.

2. I am to add that His Honour would also be glad to learn the result of the Hon'ble Mr. Justice Young's experience of the working of the system in Lucknow.

No. 87. From the Secretary to Government, North-Western Provinces and Oudh, to the Judicial Commissioner, Oudh; Sessions Judges of Allahabad, Benares and Luckhnow; Magistrates of Benares and Luckhnow, Legal Remembrancer to Government, North-Western Provinces and Oudh; Public Prosecutor, Allahabad,—No. $\frac{1648}{VI-598\text{-}B.}$, dated the 26th June 1890.

I am directed to forward a copy of letter No. 743, dated 31st May 1890, received from the Government of India, Home Department, regarding the working of the system of trial by jury, and to request that you will favour the LieutenantGovernor and Chief Commissioner with an expression of your opinion on the points raised in paragraph 2 of that letter.

No. 88. From the Secretary to Government, North-Western Provinces and Oudh, to (1) Colonel G. E. ERSKINE and W. E. NEALE, Esq.; (2) F. W, PORTER, Esq.; (3) G. ADAMS, Esq.,—No. $\frac{1649}{VI-598\text{-}B.}$, dated the 26th June 1890.

I am directed to forward the accompanying copy of a letter No. 743, dated 31st May 1890, received from the Government of India, Home Department, regarding the working of the system of trial byjury, and to request that you will favour the Lieutenant-Governor and Chief Commissioner with an expression of your opinion regarding the points raised in paragraph 2 of the letter, based on the result of your experience while (1) Sessions Judge of Lucknow, (2) Magistrate of Allahabad, and (3) Magistrate and Commissioner of Benares.

No. 89. From Colonel J. E. ERSKINE, Commissioner, Kumaon Division, to the Secretary to Government, North-Western Provinces and Oudh,—No. $\frac{1853}{XIII-340}$, dated the 7th July 1890.

I have the honour to acknowledge the receipt of your letter No. $\frac{1649}{VI-598\text{-}B.}$, dated the 26th June 1890, regarding the working of the system of trial by jury, and to state as follows:—

2. In Lucknow I had the advantage, afforded by a large city containing many inhabitants of position and education, of securnig the co-operation of juries composed of men of character and intelligence, and from these juries I received valuable assistance, which I believe I took a suitable opportunity of acknowlegding. On no single occasion, to the best of my recollection, did I disagree so completely from the verdict of the jury as to feel called upon to take action under section 307, Criminal Procedure Code. I am not prepared to make any suggestions for the improvement of the *system*. I am strongly of opinion that cases of

homicide should be absolutely excluded from the consideration of juries in these Provinces. I think jury trials should only be allowed where jurors in character, position and education can be secured, and that special care should be bestowed on the preparation of the jury lists. Speaking particularly of the Lucknow Sessions Division, I would suggest that cases committed from Bara Banki and Unao, but tried in Lucknow, might well be tried with the aid of a jury drawn from that place. When I was in charge of the division it was only cases committed from the Lucknow district that were triable by jury.

From J. WHITE, Esq., Magistrate of Benares, to the Secretary to Government, North-Western Provinces and Oudh,—No. $\frac{4}{XVII-29}$, dated the 10th July 1890. No. 90.

In compliance with your No. $\frac{1648}{VI-598 B.}$, dated 26th June 1890, I have the honour to state that in my opinion—

(1) the jury system is not admired by and appreciated by the people generally, and service on juries is intensely unpopular;

(2) juries are averse to finding verdicts of guilty against wealthy or influential or high caste criminals;

(3) juries are very ready to find verdicts of guilty against low caste men who belong to castes supposed to be habitually addicted to that, burglary and robbery;

(4) the jury system relieves Judges of a certain amount of responsibility;

(5) when juries are directed by strong and sensible Judges, and provided that the High Court displays, as the Allahabad High Court has of late, a readiness to set aside obviously perverse verdicts, the jury system does no harm;

(6) for the modified system of trial by jury as in force here, there is little to be said, and against it there is little to be urged. It is exotic and unreal.

From W. E. NEALE, Esq., Commissioner, Agra Division, to the Secretary to Government, North-Western Provinces and Oudh,—No. $\frac{7510}{XV-28}$, dated the 15th July 1890. No. 91.

In reply to your No. $\frac{1449}{VI-898-B}$. dated 26th June last, regarding the working of the system of trial by jury, I have the honour to state that my limited experience, as Sessions Judge, of juries leads me to believe that they favour the escape of criminals.

2. The duty of jurymen does not commend itself to them in any way; and as they have not the power of controlling the punishment following on conviction, they sometimes prefer not to convict. In acquitting, moreover, they are supreme, and their power is immediate and unquestioned: and this I think appeals to their vanity. They like to exercise this power. Nor does the ordinary native grasp the necessity of general principles in repressing crime. The particular case appeals to his pity, or his prejudices or his caste feelings; and general principles are laid aside.

3. As a means of education in public duties the system is perhaps useful, but there are now so many public boards and bodies in which natives can act that this is not an important consideration.

From G. ADAMS, Esq., Officiating Commissioner, Benares Division, to the Secretary to Government, North Western Provinces and Oudh,—No. $\frac{7040}{XIII-397}$, dated the 15th July 1890. No. 92.

In reply to your No. $\frac{1649}{VI-698-B.}$, of 26th June 1890 (received here on 6th instant), I have the honour to state that I have no direct personal knowledge of the working of the jury system: but from what I have heard and read and from my own experience of the methods of reasoning and ideas of evidence possessed by assessors—men of the same class and position ordinarily as jurymen—I cannot conceive that it has any "merits as a means for the repression of crime," but much the reverse.

2. I would venture to remark that I am unable to understand how under any circumstances or in any country a jury could be regarded as "a means for the repression of crime." I have never understood that this was its purpose in England; where the view is not uncommonly held that the existence of the jury favors the escape of criminals from punishment.

4. The only improvement which I can suggest is the abolition of the system.

No. 93. From H. D'O. MOULE, Esq., Commissioner, Lucknow Division, to the Secretary to Government, North-Western Provinces and Oudh,—No. 4219, dated the 14th July 1890.

I have the honour to reply to your No. $\frac{1648}{VI-598 B.}$ of 26th ultimo, in regard to the points raised in paragraph 2 of Government of India's No. 743 of 31st May last.

2. Briefly, so far as my short personal experience of the jury system goes, it has no "merits as a means for the repression of crime," and the best improvement would, I think, be to abandon it altogether.

3. As regards its working, in intelligence and usefulness, and, I may add, independence of judgment, jurors are merely assessors called by another name. But the disadvantage of jurors as compared to assessors is simple and obvious. When assessors give a wrong-headed or foolish opinion the Judge overrules it and passes sentence, giving of course fully and carefully his reasons for differing from them. But when jurors return a perverse verdict, it can only be set aside by the High Court or Judicial Commissioner, should that tribunal, after consideration of the Judge's report, feel called upon to intervene. This procedure involves trouble which a nervous or lazy Judge can easily avoid. "After all," he may say to himself, "the responsibility rests with the jury. Why not accept their verdict? Why write a troublesome report on the case perhaps to no purpose?"

4. In conclusion, I hasten to add that this supposition is in no way connected with my personal experience. So far only one of my juries has returned an unreasonable verdict, and in that case the Judicial Commissioner at once quashed it on my recommendation.

No. 94. From F. B. MULOCK, Esq., Deputy Commissioner, Lucknow, to the Secretary to Government, North-Western Provinces and Oudh,—No. 3868, dated the 29th July 1890.

In reply to your printed letter No. $\frac{1648}{VI-598 B.}$, dated 26th June 1890, forwarding letter No. 743, dated 31st May 1890, from the Officiating Secretary to the Government of India, to the Secretary to Government, North-Western Provinces and Oudh, I have the honour to state that in my opinion trial by jury has not proved a success in this country.

2. It is almost impossible to procure a conviction in the face of the clearest evidence of guilt, when the criminal is tried on a capital charge and the jury is composed of Hindus. Even in less serious cases the opinions of jurymen are here affected by side issues and social influence to an extent militating strongly against the impartial discharge of their duties. They are peculiarly susceptible to public opinion, irrespective of the strict merits of the case in which they are empanelled, and considerations of caste have often the greatest weight in warping their views.

No. 95. and 96. From C. DILLON, Esq., Public Prosecutor, High Court, NorthWestern Provinces, to the Secretary to Government, North Western Provinces and Oudh, —dated the 29th July 1890.

With reference to your No. $\frac{1648}{VI-598-B.}$, dated 26th June 1890, in which I am asked for an expression of opinion on the following points:—

(a) How the jury system has worked in the North-Western Provinces?

(b) What are its merits as a means for the repression of crime?

(c) What improvements, if any, are called for in its application?

I have the honour to state as follows:—

2. I have not had much personal experience of jury cases in District Courts, but I have had considerable experience of cases tried with the aid of assessors, and, as I imagine jurymen and assessors are drawn very much from the same classes, any observations that would apply to the latter would be equally applicable to the former.

3. The jury system was first introduced into these Provinces in 1885, and applied, in the first insatnce, only to the towns of Benares and Allahabad, but last year the system was also extended to Agra. It was confined chiefly to the trial of affences against property, and seems on the whole to have answered fairly well.

4. The enclosed statement will show that in the years 1885 to 1889, inclusive, there were 460 trials by jury in these Provinces, and that in 407 cases out of 460 the verdict of the jury was approved of by the Judge. The number of cases, therefore, in which he dissented from the verdict would be, roughly speaking, about 12 per cent. of the number tried.

5. I do not think that even in England (where it is well known that gross failures of justice not infrequently occur owing to the perverseness of juries) a much fairer percentage could be obtained.

6. It follows that as a means for the repression of such crime as falls within its cognizance the system has answered fairly well. It can at all events scarcely be said that the jury system, as it at present exists, unduly favours the escape of criminals. If guilty criminals escape conviction, as no doubt they often do, the fact is due to a combination of the following causes:—

(a) a corrupt police ;

(b) incompetent committing magistrates ;

(c) inefficient public prosecutors.

7. If, however, it is in contemplation to extend the jury system to more heinous offences (such, for example, as murder, or offences under section 304, Indian Penal Code) than those to which it at present applies, I would most earnestly deprecate such a step.

8. The offenders with whom juries have to deal under the system as at present constituted are generally habitual offenders and men of low caste, in regard to whom juries have little or no difficulty in arriving at an unprejudiced conclusion upon the merits of the case.

9. But were the system extended to the trial of offences such as those indicated in paragraph 7, I very much fear that juries in a large number of cases will be unable to arrive at a right conclusion upon the merits, owing either to the caste of the offender, his position in life or the heinousness of his offence, which may possibly upon conviction lead to a capital sentence being inflicted.

10. I think I am justified in this opinion by the figures shown in the enclosed statement from which it will appear that during the five years under consideration, 6,203 cases were tried with the aid of assessors, out of which the Judge approved of the verdict in 4,744 cases. In other words, the Judge disapproved of the verdict of the assessors in, approximately, 25 per cent. of the whole number of cases tried.

11. This practically, would be the result if the jury system were generally extended or applied to offences other than those to which it at present applies.

12. It will be seen that juries have given greater satisfaction than assessors, although they are drawn from the same classes. The fact is capable of simple explanation. It is due to the jury system being at present introduced only into a few large towns, in which, as a rule, a better class of jurors are obtainable than elsewhere.

13. I do not see what improvements can be suggested in the system as it at present exists, unless better men, such as sit on special juries in England, were made to do duty as jurors ; but such a step would, I fear, be most unpopular with those concerned, notwithstanding the fervid utterances of Congress orators, which would lead one to suppose that the gentry and tradesmen of India are consumed with a desire to sit upon juries, which they certainly are not.

P.S.—I regret that I could not send in this report earlier. The delay is due to the exceptionally heavy criminal work in the High Court during the month of July, which demanded all my attention and took up nearly all my time.

Statement showing the case of Jurors and Assessors in the North-Western Provinces during the years 1885, 1886, 1887, 1888 and 1889.

Year.	Number of cases tried by jury.	Number of cases in which Judge approved of verdict.	Number of case tried by assessors.	Number of cases in which Judge approved of verdict.	Established or arranged number of jury in each case and prescribed qualification.	Established or arranged number of assessors in each case and prescribed qualification.
1885 . .	50	46	1,248	928	Five—for qualifications, *vide* sections 319 and 320, Criminal Procedure Code.	Two or more—for qualifications, *vide* sections 319 and 320, Criminal Procedure Code.
1886 . .	79	66	1,106	856		
1887 . .	78	65	1,211	964		
1888 . .	122	111	1,349	1,012		
1889 . .	131	119	1,289	984		
TOTAL .	460	407	6,203	4,744		

No. 97. From the Hon'ble G. E. KNOX, Legal Remembrancer to Government, North-Western Provinces and Oudh, to the Secretary to Government, North-Western Provinces and Oudh,—No. $\frac{4266}{F-1107}$, dated the 31st July 1890.

I have the honour, in reply to your No. $\frac{1618}{VI-598-B.}$, dated the 26th day of June 1890, to say that I have had little personal experience of the system of trial by jury in these Provinces.

It was not in force in any district during the time that I was Judge, and I have never been present at any trial in which jurors took part.

I have, however, taken a good deal of interest in the question, and the result of what I have heard both from Judges who have presided at trials held with a jury and from natives, confirms me in the view that I have long held about trials with the assistance of natives as assessors.

The presence and assistance of jurors are of great value in determining questions of fact. There is much of native customs, mode of thought and habit, of which the most experienced European Judge is ignorant, and the knowledge which jurors have on these points must often supply tests by which the value of the evidence given by a witness can be tried. But as with assessors so with jurors, very much depends upon the Judge. The system has been tried in these Provinces at Allahabad, Benares and Lucknow, and in all three places the Government has been fortunate in securing, almost without intermission since 1884, Judges who have not only by their sympathy and patience won the interest and confidence of their jurors, but who have also had long experience in dealing with criminal cases. A strong and patient Judge will not often have to complain of his jury, especially if he have a good jury list, and I think there are districts to which the system could be extended with advantage. The difficulty is, however to name such districts, as from my point of view so much depends upon the Judge ; still there are districts, such, for instance, as Meerut, Saharanpur, Shahjahanpur and Bareilly, which are generally held by senior Judges, to which trial by jury could be safely entrusted.

I am further of opinion that the classes of offences to which trial by jury may be applied might be extended with advantage. All offences cognizable by Courts of Session under Capaters XI and XVIII of the Indian Penal Code might be deemed offences triable by jury. I would, however, still exclude for the present offences under Chapter VIII, and out of Chapter XVI the offences at present reserved for trial by Judges. As a rule this class of trials, especially those for offences under Chapter VIII, are long and wearisome, and they are trials in which the greatest necessity exists for mental endurance and vigilance. A trial for an offence under Chapter XVII is soon over and contains more variety of incidents. There is, too, the fact that offences, like rioting and murder, are apt to arouse a local interest which is not favourable to a calm and dispassionate trial. They are more talked of before a trial begins and during its progress, and all jurors are not free from the danger of allowing themselves to be influenced by outside gossip and rumour. Instances are not wanting of Judges with a weakness for deciding cases not upon the evidence before them, but upon some outside incident or matter in a police diary which they consider throws a new light upon the evidence given in Court.

Great care and discrimination should be exercised in revising jury lists. A Judge should always note and have removed at the first revision of the list the juror who goes to sleep during a trial, or who shows himself otherwise incapable and unfit for such service.

The number now prescribed (seven) should, I think, be retained.

In brief, I am in favour of the system being extended locally to Saharanpur, Meerut, Bareilly, Moradabad, Shahjahanpur, and Sitapur, and as regards classes of offences to all offences under Chapters XI and XVIII of the Indian Penal Code.

No. 98 From H. FRASER, Esq., Registrar, High Court of Judicature, North-Western Provinces, to the Secretary to Government, North-Western Provinces and Oudh,—No. 4169, dated the 20th August 1890.

I am directed to acknowledge the receipt of G. O. No. $\frac{1847}{VI-598B.}$, dated 26th June 1890, and in reply to forward copies of minutes by the Chief Justice and by Mr. Justice Young regarding the jury system.

Mr. Justice Mahmood has been unable to find time to express an opinion upon the matter, and Mr. Justice Brodhurst has been prevented from doing so by ill-health, but will, if not too late, be glad to do so immediately on the re-opening of the Court after the vacation.

Mr. Justice Straight and Mr. Justice Tyrrell are absent on leave to England.

Minute dated the 15th July 1890 by the Hon'ble Mr. Justice YOUNG. No. 99.

In reply to His Honour the Lieutenant-Governor and Chief Commissioner's inquiry as to the results of my experience of the working of the system of trial by jury in Oudh, I have only to say that since its introduction into Lucknow no complaints of any difficulties thence arising were brought to my notice either by the Judges or by the executive authorities.

To the best of my remembrance—and I am obliged to speak merely from memory, having no memoranda with me—no verdicts of juries were referred to me by Judges for revision. The impression left on my mind from what I myself could learn and from what I heard from the Judges, was that jurymen as a rule were about on the same level as assessors, neither much better nor much worse. Assessors, as I have several times already informed Government, do, in my opinion, often render very valuable aid to the Courts. Their knowledge of native life and habits often throws much light on a case; their appreciation of native character often enables them instinctively to judge rightly whether a witness is telling truth or falsehood; and generally if the Judge wishes to avail himself of their aid and treats them with courtesy, assessors engage intelligently in the hearing of the case before them. Of course there is a percentage of invincibly stupid assessors, and some are too feeble or lazy to understand the facts, much less to draw conclusions from them. Jurymen, I think, as a rule act very much as do assessors. The office is not one that is run after. Indeed, most jurymen would fain decline the honor thrust upon them if they could do so. I think pains should be taken to revise the jury lists, to weed out sickly, feeble, or unusually stupid jurymen. I think that jurymen should be paid at rates somewhat better than those paid to witnesses.

I would continue the system, which I think valuable, both as a means of eliciting facts in trial and also as an important training for a large number of the native community.

No facts have been brought to my notice to lead me to think that the system has at all favoured the escape of criminals, and if the Judge is competent and treats the jury properly, I do not think it is likely to do so, so long as no question of life or death to the accused is involved in the verdict of the jury.

Minute dated the 9th July 1890 by the Hon'ble the Chief Justice (Sir JOHN EDGE*).*

So far as I have had an opportunity of forming an opinion I think that trials by jury are not suited to these Provinces. A jury in the hands of a strong Judge may go right, but in the hands of a weak Judge or of a Judge who cannot influence his jury, the result of a trial is very doubtful. The caste or social position of an accused not unfrequently has more effect with a jury than has the evidence. When a verdict is obtained by the strength and influence of a Judge, it is manifest that the verdict should be regarded more as his verdict than as that of the jury, and in such a case the jury is a useless addition to the tribunal. I have had considerable experience of jurors in criminal cases in England, where, as a rule, jurors are more to be depended on than in these Provinces. The result of that experience was to satisfy me that a person who is in fact guilty of the offence with which he is charged has a much better chance of escaping punishment if he be tried by a jury than he would have if tried by a Judge without a jury. A jury is very likely to be influenced by small or irrelevant points, by local surroundings, or by prejudice. When appearing for prisoners I have obtained verdicts from agricultural jurors which no jury of tradesmen from a town would have given me, and I have obtained verdicts from town jurors which no agricultural jury would have given me. It required little evidence to secure a verdict for the Crown if the class of offence was one from which the jurymen or their neighbours suffered. If it was not, the accused had a good chance of an acquittal, no matter what the evidence was. I have found as a rule in England that one or two men on a jury guide the jury, and that the verdict was not the result of individual attention and application of each juryman to the evidence. Few jurymen are capable of taking in the facts of a case if it is at all complicated. In my opinion the jury system is not suited as a means for the repression of crime. The only improvement I can suggest is that trial by jury be abolished in these Provinces. It is to be remembered that in India a person convicted by a Magistrate or a Judge has an appeal or can apply for revision. No. 100.

From R. MACLEOD, Esq., District Judge of Benares, to the Secretary to Government, North-Western Provinces and Oudh,—No. 761, dated the 18th September 1890. No. 101.

With reference to your No. $\frac{1648}{VI-598-B}$, dated 26th June 1890, and its enclosure, I have the honour to submit herewith copies of the report* and statements submitted by me to the Hon'ble High Court regarding the working of the system of trial by jury.

* No. 755, dated 15th September 1890.

No. 102 From R. MacLeod, Esq., Officiating Sessions Judge of Benares, to the Registrar, High Court of Judicature, North-Western Provinces,—No. 755, dated the 15th September 1890.

In reply to your No. 3129, dated 11th July 1890, I have the honor to state as follows:—

2. The jury system was introduced into this District on 1st January 1885. By G. O. No. $\frac{1693}{VI-545A-10}$, dated 10th December 1884, the jury is to consist of five persons, and the following offences are the ones triable:—

I.—Kidnapping and abduction . .	Secs. 363, 364, 365, 366, 367, 368, 369, 372 and 373, Indian Penal Code.
II.—Rape	Sec. 376, Indian Penal Code.
III.—Theft	Secs. 379, 380, 381, and 382, Indian Penal Code.
IV.—Robbery and dakaity . . .	Secs. 392, 393, 394, 395, 397, 398, 399, and 401, Indian Penal Code.
V.—Criminal misappropriation . .	Secs. 403 and 404, Indian Penal Code.
VI.—Receiving stolen property . .	Secs. 411, 412, 413 and 414, Indian Penal Code.
VII.—Mischief	Secs. 426, 427, 428, 429, 430, 431, 432, 434, 435, 436, and 440, Indian Penal Code.
VIII.—House-trespass	Secs. 448, 450, 451, 452, 453, 454, 555, 456, 457, 485, 459, 460, 461 and 462, Indian Penal Code.
IX.—Offences relating to marriage . .	Secs. 493, 494, 495, 496, 497 and 498, Indian Penal Code.

X.—Abetments of, and attempts to, commit any of the above-mentioned offences.

3. The results for each year are—

1885.—Twenty-five cases (twenty-seven persons) were tried by jury. Verdicts of guilty were returned in nineteen cases (twenty-one persons) and of not guilty in six cases.

The Court gave judgment in each instance in accordance with the verdict, and no cases were referred under section 307 Criminal Procedure Code.

1886.—Twenty-two cases (thirty-three persons) were so tried. Verdicts of guilty were given in sixteen cases (twenty-three persons) and not guilty in six cases (ten persons). No cases were referred.

In 1887, forty-six cases (eighty-two persons) were tried. Verdicts of guilty were given in thirty-eight cases (sixty-four persons being found guilty and three persons not guilty).

Verdicts of not guilty were given in eight cases (fifteen persons).

In one case, sections 363, 376, Penal Code, in which four persons were tried, the jury found all four accused guilty; the Judge convicted one person and referred the findings as to the three others, and the High Court acquitted these three.

Two findings of not guilty (sections 379, and 376, Penal Code, respectively) were referred but the High Court acquitted in both cases.

In 1888 seventy-seven cases (one hundred and three persons) were tried. Verdicts of guilty were given in sixty-six cases (eighty-seven persons guilty and two persons not guilty). Verdicts of not guilty in eleven cases (fourteen persons). The Court referred one verdict of not guilty (section 392), but the High Court acquitted.

In 1889 eighty-seven cases (one hundred and fifteen persons) were tried. Verdicts of guilty were given in sixty-three cases (seventy-eight persons guilty, four not guilty).

Verdicts of not guilty in twenty-four cases (thirty-three persons); six cases were referred.

One in which three persons were found guilty under section $\frac{363}{109}$ the High Court convicted.

Five in which verdicts of not guilty had been returned, the High Court convicted four of these and acquitted one (section 436, Penal Code).

In 1890, up to date seventy-six cases (one hundred and two persons) have been tried.

Verdicts of guilty were given in forty-nine cases (sixty-eight persons) guilty, one not guilty.

Verdicts of not guilty in twenty-seven cases (thirty-three persons); three cases were referred. The High Court convicted in two (section $\frac{37}{75}$ and section 435), and acquitted in one (section $\frac{379}{75}$).

4. The following table gives the total result :—

Year.	Cases.	Persons.	JURY GAVE VERDICT—				
			OF GUILTY.			NOT GUILTY.	
			Cases.	Persons.		Cases.	Persons.
				Guilty.	Not guilty.		
1885	25	27	19	21	...	6	6
1886	22	33	16	23	...	6	10
1887	46	82	38	64	3	8	15
1888	77	103	66	87	2	11	14
1889	87	115	63	78	4	24	33
1890, 9 months	76	102	49	68	1	27	33
TOTAL .	333	462	251	341	10	82	111

5. Cases convicted, 251 out of 333=75 per cent.; persons convicted, 341 out of 462=74 per cent.

6. The following table shows the result of references under section 307, Criminal Procedure Code (persons) :—

Year.	VERDICTS REFERRED.		VERDICT.			
			GUILTY.		NOT GUILTY.	
			High Court.		*High Court.*	
	Guilty.	Not guilty.	Upheld.	Reversed.	Upheld.	Reversed.
1885	...	...	...	...	...	...
1886	...	...	...	...	...	...
1887	3	2	...	3	2	...
1888	...	1	...	...	1	...
1889	3	5	3	...	1	4
1890	...	3	...	...	1	2
TOTAL .	6	1	3	3	5	6

That is, out of references affecting 17 persons the High Court upheld the verdict of the jury in eight cases and reversed it in nine cases.

7. My personal experience has been as follows :—

I was officiating here from 5th June 1889 to 5th November 1889, and again from 1st March 1890 up to date. During those periods, 76 jury cases have been tried before me. I have referred four cases under section 307, Criminal Procedure Code.

In 1889, the first was one in which three persons were found guilty by the jury under section $\frac{109}{363}$. The High Court convicted.

The second was one under section 436, Penal Code. The jury found the prisoner not guilty. The High Court acquitted.

The third was this year under section $\frac{379}{75}$. The jury found the prisoner not guilty. The High Court acquitted. The man has since been arrested under very suspicious circumstances, and his case is pending in this Court on a reference by the Joint Magistrate under section 123, Criminal Procedure Code (Queen-Empress *versus* Chaprasia).

The fourth was under section 435, Penal Code. The evidence was quite clear, and the High Court convicted, the jury having returned a verdict of not guilty.

This last case was the only one in which the verdict was palpably wrong on the face of it.

In the third case (Chaprasia) the man, after a number of previous convictions, was caught committing a theft (according to the evidence which was not rebutted in any way) immediately after his release from jail. The previous convictions were not before the jury, or there can be little doubt they must have taken a different view. The new Bill to amend the Evidence Act may perhaps remedy this. I may here remark that when in doubt juries invariably ask whether the man has been previously convicted or not; but they are of course told this information cannot be given to them. Further, I have noticed that the more accomplished a thief is the more plausible is the story he can put forward. It is usually unsupported by evidence, and the jury in trying to estimate whether it may possibly be true, not unnaturally, I think, wish to know whether the man has ever been convicted before or not. If this information is withheld from them, and specially if there is a string of five or six previous convictions, it is hardly fair to blame them if an "habitual" gets off occasionally.

Besides the cases I have referred there are a few—a very few, perhaps two or three—in which I have accepted the verdict, though I disagreed with it: those, namely, which turned entirely on the credibility of the witnesses, the High Court having laid down that this is exclusively a question for the jury.

8. The first question now is, how far has the jury system been successful as a means for the repression of crime? There can be little doubt of its success in that respect here. The District Magistrate is jubilant (see his recent letters to the *Pioneer*, in which, however, he takes all the credit to himself apparently). He says the effect produced (whatever cause it is due to) has been excellent, and crime has fallen off enormouslythis year. As the class of crime referred to consists of those cases triable exclusively by jury, it is clear there is nothing to be said against the system on this ground.

9. The next question is what defects there are in the system as worked at present. I have consulted a number of native gentlemen, a good many of them of course pleaders, but others as well, and there seems to be a universal opinion that the jurors are an inferior class of men altogether, that they are chosen from the same class as assessors, whereas they ought to be much superior to "assessors," who are apparently looked on with undisguised contempt. I have spoken to Mr. White about this, and he tells me the names on the list were at first open to criticism, but that for the last two or three years great pains have been taken to weed out unsuitable persons and get proper persons put on. If it is still objected that the present juries are ignorant and illiterate, then the answer would seem to be that the place is not ripe yet for the jury system. It is not to be expected that what would correspond to a *special jury* at home should be provided for every petty trial.

So far as I have seen, although there may sometimes be a lazy and inattentive juror, juries have as a rule done their work intelligently and tried to get at the truth; they have, for instance, not unfrequently asked very pertinent questions.

10. The chief danger in the way the system is worked I think, not very pressing at present perhaps, but which would require immediate attention if it were extended to other offences, is the fact that no provision is made to keep the jurors together and away from external influence till the case is decided. No important case, and especially if defended by vakils is ever finished in one day. Section 296, Criminal Procedure Code, provides that the High Court may make rules as to locking up the jury in such cases, but no rules have been made so far as I know. The jurors are allowed to go to their homes. No one who knows anything of this country can be ignorant of what the result must be. Whether they would take bribes or not, it is absolutely certain that bribes would be offered, and that all kinds of persuasion and pressure would be made use of. In England, where the jury system has been in force for hundreds of years and where ordinary morality on certain points, bribery in particular, is much higher than here, jurors are kept under supervision till the close of the case: and here, where the system is just being introduced, but where it is recognized how much more influence a juror has than an assessor on the result of the case, they are allowed to go home, to be open to any approaches without the slightest attempt to keep an eye on them.

11. Detailed lists for each year are submitted as asked for.

ENCLOSURE.

Statement of trials held by jury during the years 1885, 1886, 1887, 1888, 1889, and January to September 1890, inclusive. (The statement was not forwarded to the Government of India).

From F. W. PORTER, Esq., Magistrate of Allahabad (on Special Duty with the Police Re-organization Committee), to the Secretary to Government, North-Western Provinces and Oudh,—dated the 22nd September 1890. No. 103.

Replying to your letter No. $\frac{1649}{\text{VI-598-B.}}$, dated 26th June 1890, calling for my opinion as to the working of the jury system in these Provinces, I have the honour to submit a statement showing the number of cases tried with juries in Allahabad during the five years (1885—89) I was in charge of that district.

2. During these five years the Sessions Judge tried with the help of juries 189 cases, in which there were 305 defendants. Of these, 174 were convicted and 131 acquitted. In 109 acquittals, the Judge agreed with the jury, but in 22 cases, or 20 per cent. of the acquittals, the Judge has recorded his entire dissent from their verdict. With regard to 10 of these defendants the Judge made references to the High Court, and with respect to five, the verdict of the jury was set aside, and the prisoners convicted.

These facts, I think, speak for themselves, more specially when it is borne in mind that the High Court will never, if they can possibly avoid it, interfere with the verdict of a jury. It is a High Court axiom that the verdict of a jury on a question of fact is infallible. Still with all this in their favour we find the Judge dissenting from 20 per cent. of the verdicts of acquittals, referring 10 per cent. to the High Court, and the High Court themselves constrained to reverse 5 per cent. I have been over most of the cases in which the Judge dissented from the jury's verdict, and I feel convinced that had not the High Court expressed such decided views on the subject, the Judge would have referred the whole number instead of only half.

3. Again, does it not strike one that an annual average of 33 cases of habitual offenders committed to the Sessions is rather a small average for so large a district as Allahabad? The explanation is that Deputy Magistrates would sooner sentence habituals themselves, than send them before a jury to be acquitted. I have often had this said to me when remonstrating with Deputy Magistrates for not committing habituals to the sessions. I would note also that of the 22 cases in which the Judge has recorded his dissent 19 are cases of habituals.

4. The Government of India have, in the conclusion of paragraph 1 of their No. 473, dated 31st May 1890, quoted the reluctance of native jurymen to convict when there is any possibility of a capital sentence being passed, as one of the strongest arguments against juries. One of the points brought most prominently forward in the correspondence which led to the appointment of the Police Committee now sitting, is the reluctance of respectable native witnesses to give evidence against known bad characters. If—and on this point there is not a dissentient voice—respectable natives decline to give evidence against known bad characters, how can one expect respectable natives on juries to convict habitual offenders unless absolutely obliged to do so? The two cases are exactly parallel, and no respectable native will deny that it is with the utmost possible reluctance that he takes his place on a jury to try an habitual offender, and that he starts with the intention of recording a verdict of acquittal if possible.

5. This being so, I cannot but record my opinion that the jury system in India, as a means for the repression of crime, is worse than useless, and that the only improvement possible is to abolish it altogether, certainly so far as habituals are concerned.

Statement of cases tried by the Sessions Judge of Allahabad with the aid of Juries during the five years 1885—1889.

Years.	House breaking.	Robbery and dakaiti.	Theft.	Receiving stolen property.	Criminal misappropriation.	Arson.	Offences relating to marriage.	Abduction and kidnapping.	Rape and unnatural offences.	Total number of offences.	Total number of persons concerned.	Number of persons found guilty.	Number of persons found not guilty.	With concurrence of the Judge.	The Judge disagreeing with the Jury.	Remarks.
1885 . . .	7	1	11	2	...	...	...	...	1	22	32	29	3	2	1	In 10 out of the 22 cases noted in the last column of this statement, the Judge made reference to the High Court, and five of the prisoners were re-tried by that tribunal and convicted. In the other 12 cases the Judge merely recorded his dissent from the jury's verdict, but made no reference.
1886 . . .	16	6	15	9	1	...	...	3	5	55	73	43	30	23	7	
1887 . . .	14	9	...	2	...	3	2	2	4	36	63	28	35	33	2	
1888 . . .	8	6	14	4	...	4	1	...	5	42	71	30	41	31	10	
1889 . . .	15	2	8	4	...	2	...	...	3	34	66	44	22	20	2	
TOTAL, 5 YEARS .	60	24	48	21	1	9	3	5	18	189	305	174	131	109	22	

From F. E. ELLIOT, Esq., Sessions Judge of Allahabad, to the Secretary to Government, North-Western Provinces and Oudh,—No. 614, dated the 22nd September 1890. No. 105.

I have the honour, in reply to your letter No. $\frac{1648}{\text{VI-598 B}}$, dated 26th June last (received 7th July), to furnish a review of the operation of the jury system in this Judgeship since its introduction in 1885.

2. A report was submitted at the end of 1885, under No. 1, dated 4th January 1886, of this office, but the present review includes the figures of 1885 also.

3. The results of trials (A) by jury, (B) by a jury as such, in respect of one or more offences, and by the same sitting as assessors under the provisions of section 269 of the Criminal Procedure Code, in respect of other offences charged in the same case, but not triable by jury, have been shown in three statements as follows:—

Appendix I.—Cases.
Do. II.—Persons.
Do. III.—Classification of offences.

4. The first is that which exhibits the working of the system most clearly. In this the cases in which the verdict was unanimous, have been separated from those in which there was a difference of opinion, and the verdicts of "not guilty" have been divided into those which were approved by the Court, doubtful, or disapproved.

5. These columns include some cases in which a mixed verdict was delivered, that is to say, in which some of the accused were found guilty and some not guilty, or in which the accused were found guilty of one offence, but not of another, with which they were charged. As the number of such cases is small, I have not thought it desirable to confuse the statement, Appendix I, by distinguishing them, but some details are given below:—

YEAR.	No. of mixed verdicts.	PRESENT.		VERDICT CASES			REMARKS.
		Found guilty.	Found not guilty.	Approved.	Doubtful.	Disapproved.	
1885		None.					
1886	5	5	7	1	3	1	The verdicts were in every case unanimous.
1887	4	7	9	2	2	...	The two doubtful verdicts were those of a majority.
1888	2	5	9	...	...	2	One verdict was unanimous, the other not so.
1889	2	11	5	2	...	...	Verdicts unanimous.
1890	1	...	...	...	...	...	Record gone to the High Court in appeal (not included in total).
TOTAL	13	28	30	5	5	3	

6. Under the head of doubtful in Appendix I, I have placed those verdicts in which I did not wholly agree, but which were accepted as possibly, if not probably, right, the evidence being open to question.

7. The following abstract shows the total number of cases tried by jury during the whole period under review and the results of the trials:—

Cases.	Guilty.	VERDICTS OF NOT GUILTY.					REMARKS.
		Approved.	Doubtful.	Disapproved.	Total.	Referred.	
218	131	30	31	25	86	6	

8. There were during the period covered by the statement 25 cases in which I definitely disagreed with the verdict, but of these only 6 were referred to the High Court under the provisions of section 307 of the Criminal Procedure Code. As will be seen, the results of the references which were made were not such as to encourage free recourse to those provisions.

9. In four the High Court declined to interfere. In two cases a new trial was ordered. In one of these a fresh jury found the accused not guilty (of theft). The verdict was again referred and confirmed. In the other instances the case was re-tried by the High Court itself, with the result that five out of seven persons accused were convicted of murder and sentenced.

10. This last was a very serious instance of the miscarriage of justice likely to arise if trials by jury were to be extended to offences against the person attended by violence. The accused murdered a near relative at night and plundered his house. They were not professional thieves, but they technically committed dakaiti, and this offence was triable by a jury,

In regard of the main point of the indictment, the murder, their opinion was taken as assessors. They unanimously acquitted all the accused on both charges, and the two offences were so inseparably connected that it was impossible for the Sessions Court to convict them of murder without practically setting aside the finding of the jury (as such) with regard to the dakaiti, and the acquittal on the latter charge also protected the accused from the provisions of section 396, Criminal Procedure Code (common responsibility for murder committed in conjointly committing dakaiti). It was, therefore, necessary to send the case before the High Court, with the results above noted.

11. In the other four cases the Court declined to interfere on the ground that the questions were purely of fact, and that it was not desirable to set aside the finding of a jury in such cases. In three of these four cases the verdict was that of a majority of three to two, the Judge concurring with the minority, and in one instance the Chief Justice observed that if he had been on the jury himself he would probably have convicted.

12. Appendix II shows the number of *persons* convicted and acquitted by juries since 1885. The form is that of a return recently called for by the High Court.

13. In Appendix III the trials are classified according to the nature of the offence. The second part, showing those cases in which some of the offences charged were triable by a jury (as such) and some with the aid of the jury as assessors, illustrate the reluctance of juries to convict in cases attended by murder and culpable homicide.

14. On the whole these results are in my judgment favourable to the experiment of trial by jury *under its present limitations*. The old reproach of servility and indifference, to which assessors were notoriously open cannot in my experience be brought against juries. I find them independent and almost invariably attentive. Assessors have also begun to show more interest in their duties, and some sense of responsibility appears to have been awakened.

15. In ordinary cases when the question is one of the veracity of witnesses, the opinion of the more intelligent assessors is most useful, and juries (who come from the same class) may, as a rule, be trusted to do justice. But they are timid in cases involving very serious sentences and unable to understand nice distinctions, such as the difference between murder and culpable homicide not amounting to murder, the right of private defence, a question of good faith: as, for instance, in an action for defamation, and other similar matters requiring close reasoning.

16. I have only had two complaints of undue partiality. Both on inquiry appeared to me to be unfounded, and to have been made with the object of procuring a fresh trial. But there can be no doubt that in India jurymen must be peculiarly susceptible to various influences, and liable to be biassed by prejudice or religious feeling, and, even where no such disturbing causes exist, to be guided by what they have heard out of Court rather than by the evidence.

17. Nevertheless the actual results are, I think, favourable to a continuance of the system of trial by jury on its present foundation in this particular judgeship.

18. This report should have been submitted during the Muharram holidays in the end of August, but some necessary corrections delayed the completion of the statements until the beginning of the September sessions, since which I have been in ill-health and scarcely able to carry on the current work, which has been severe.

APPENDIX I.

No. 106. *Statement showing the results of trials by Jury, 1885—1890.*

Year.	Number of cases.	Verdict.	Guilty.	Verdict of not guilty.				Referred.	Remarks.
				Approved.	Doubtful.	Disapproved.	Total.		
1	2	3	4	5	6	7	8	9	10
			A Tried by a Jury as such.						
1886 . .	24	Unanimous	18	...	2	1	3	1*	* New trial ordered. Accused acquitted by fresh jury. Verdict again referred and confirmed by High Court.
		Of a majority . . .	1	...	...	...	...	...	
		TOTAL A . .	19	...	2	1	3	1	

Statement showing results of trials by Jury, 1885—1890—(contd.).

Year.	Number of cases.	Verdict.	Guilty.	Verdict of not guilty.				Referred.	Remarks.
				Approved.	Doubtful.	Disapproved.	Total.		
1	2	3	4	5	6	7	8	9	10
		B. *Tried by a Jury under clause 2, section 269, Criminal Procedure Code (offence not ordinarily triable by Jury).*							
		Unanimous	1	...	...	...	...	...	
		Of a majority	1	...	...	...	...	...	
		Total B	2	...	...	...	...	...	
		GRAND TOTAL, A AND B	21	...	2	1	3	1	
		A. *Tried by a Jury as such.*							
1886	54	Unanimous	27	14	4	3	21	1*	* The High Court declined to interfere.
		Of a majority	...	...	2	2	4	2*	
		Total A	27	14	6	5	25	3	
		B. *Tried by a Jury and by a Jury sitting as assessors under section 269, Criminal Procedure Code, as amended by section 9, Act X, 1886.*							
		Unanimous	2	...	...	...	...	...	
		Of a majority	...	...	...	...	...	...	
		Total B	2	...	...	...	...	...	
		GRAND TOTAL, A AND B	29	14	6	5	25	3	
		A. *Tried by a Jury as such.*							
1887	36	Unanimous	19	2	8	3	13	...	
		Of a majority	...	...	2	1	3	1*	* The High Court declined to interfere.
		Total A	19	2	10	4	16	1	
		B. *Tried by a Jury and by a Jury sitting as assessors under section 269, Criminal Procedure Code, as amended by section 9, Act X, 1886.*							
		Unanimous	...	...	...	1	1	...	
		Of a majority	...	...	...	...	...	...	
		Total B	...	...	...	1	1	...	
		GRAND TOTAL, A AND B	19	2	10	5	17	1	

Statement showing results of trials by Jury, 1885—1890—(contd.).

Year.	Number of cases.	Verdict.	Guilty.	Verdict of not guilty. Approved.	Doubtful.	Disapproved.	Total.	Referred.	Remarks.
1	2	3	4	5	6	7	8	9	10
		A. *Tried by a Jury as such.*							
1888	43	Unanimous	23	4	2	7	13	...	
		Of a majority	...	1	1	2	4	...	
		Total A	23	5	3	9	17	...	
		B. *Tried by a Jury and by a Jury sitting as assessors under section 269, Criminal Procedure Code, as amended by section 9, Act X, 1886.*							
		Unanimous	...	...	1	2	3	1*	* Re tried before High Court: five convicted two acquitted.
		Of a majority	...	...	...	...	...	...	
		Total B	...	...	1	2	3	1	
		GRAND TOTAL, A AND B	23	5	4	11	20	1	
		A. *Tried by a Jury as such.*							
1889	37	Unanimous	21	3	5	2	10	...	
		Of a majority	...	2	1	...	3	...	
		Total A	21	5	6	2	13	...	
		B. *Tried by a Jury and by a Jury sitting as assessors under section 269, Criminal Procedure Code, as amended by section 9, Act X, 1886.*							
		Unanimous	2	...	...	...	...	...	
		Of a majority	...	1	...	...	1	...	
		Total B	2	1	...	...	1	...	
		GRAND TOTAL, A AND B	23	6	6	2	14	...	
		A. *Tried by a Jury as such.* (Half-year to end of June.)							
1890	24	Unanimous	17	...	3	1	4	...	
		Of a majority	...	2	...	...	2	...	
		Total A	17	2	3	1	6	...	

Statement showing results of trials by Jury, 1885—1890—(concld.)

Year.	Number of cases.	Verdict.	Guilty.	Verdict of not guilty. Approved.	Doubtful.	Disapproved.	Total.	Referred.	Remarks.
1	2	3	4	5	6	7	8	9	10
		B. *Tried by a Jury and by a Jury sitting as assessors, under section 269, Criminal Procedure Code, as amended by section 9, Act X, 1886.*							
		Unanimous	...	...	...	...	...	...	
		Of a majority . . .	...	1	...	...	1	...	
		Total B .	...	1	...	...	1	...	
		GRAND TOTAL, A AND B .	17	3	3	1	7	...	
	218	GREAT GRAND TOTAL .	131	30	31	25	86	6	

APPENDIX II.

Statement showing number of persons convicted and acquitted by jurors, 1885—1890. **No. 107.**

Year.	Number of cases.	Persons. Verdict. Guilty. Unanimous.	Majority.	Total.	Not guilty. Concurred in by the Judge.	Not concurred in by the Judge.	Total.	Referred to the High Court.	Remarks.
1	2	3						4	5
	Tried by Jury.								
1885	22	28	1	29	2	1	3	1*	* Verdict confirmed.
	Under section 269, clause 2, Act X of 1882 (some of the offences not ordinarily triable by Jury).								
1885	2	1	1	2	...	...	...	...	
GRAND TOTAL .	24	29	2	31	2	1	3	1	
	Tried by Jury.								
1886	53	40	3	43	37	7	44	6†	† Verdict confirmed.
	Tried by Jury and partly by Jury sitting as assessors (section 269, Act X of 1882, as amended by section 9, Act X of 1886).								
1886	1	3	...	3	...	...	...	...	
GRAND TOTAL .	54	43	3	46	37	7	44	6	

Statement showing number of persons convicted and acquitted by jurors, 1885—1890—(contd.)

1	2	3						4	5
		PERSONS.							
		VERDICT.							
		Guilty.			Not guilty.				
YEAR.	Number of cases.	Unanimous.	Majority.	Total.	Concurred in by the Judge.	Not concurred in by the Judge.	Total.	Referred to the High Court.	REMARKS.
	Tried by Jury.								
1887	35	25	3	28	33	2	35	1*	* Verdict confirmed.
	Tried by Jury and partly by Jury sitting as assessors (section 269, Act X of 1882 as amended by section 9, Act X of 1886).								
1887	1	...	1	1	1	...	1	...	
GRAND TOTAL .	36	25	4	29	34	2	36	1	
	Tried by Jury.								
1888	40	27	3	30	29	5	34	...	
	Tried by Jury and partly by Jury sitting as assessors (section 269, Act X of 1882, as amended by section 9, Act X of 1886).								
1888	3	...	5	5	4	5	9	5†	† Convicted on re-trial.
GRAND TOTAL .	43	27	8	35	33	10	43	5	
	Tried by Jury.								
1889	34	43	1	44	20	2	22	...	
	Tried by Jury and partly by Jury sitting as assessors (section 269, Act X of 1882, as amended by section 9, Act X of 1886).								
1889	3	10	...	10	2	...	2	...	
GRAND TOTAL .	37	53	1	54	22	2	24	...	
	Tried by Jury.								
1890	23	16	5	21	8	...	8	...	
	Tried by Jury and partly by Jury sitting as assessors (section 269, Act X of 1882, as amended by section 9, Act X of 1886).								
1890	1	...	...	...	1	...	1	...	
GRAND TOTAL .	24	16	5	21	9	...	9	...	

APPENDIX III.

Classification of cases tried by Jury, 1885—1890.

Section.	Offence.	1885.			1886.			1887.			1888.			1889.			1890.			TOTAL.			REMARKS.
		Number of cases.	Acquittals.	Disapproved.	Number of cases.	Acquittals.	Disapproved.	Number of cases.	Acquittals.	Disapproved.	Number of cases.	Acquittals.	Disapproved.	Number of cases.	Acquittals.	Disapproved.	Number of cases.	Acquittals.	Disapproved.	Number of cases.	Acquittals.	Disapproved.	
	Tried by a Jury as such.																						
360, 363, 366, 368	Kidnapping	...	...	...	3	3	...	1	...	...	...	...	...	...	...	...	...	...	...	4	3	...	
376	Rape	1	...	...	5	2	...	4	3	1	5	1	...	3	2	1	4	1	...	22	9	2	
379, 380	Theft	11	1	1	12	3	...	6	2	2	13	4	2	8	4	1	8	2	...	58	16	6	
382	Do. with hurt	...	...	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	1	...	...	
406	Criminal breach of trust	...	...	...	1	1	1	...	...	...	...	...	...	...	...	...	...	...	...	1	1	1	
417	Cheating	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	1	...	...	1	...	...	
411, 414	Dishonest possession of stolen property	2	1	1	8	6	1	2	2	...	4	3	3	4	2	1	2	...	...	22	14	6	
435, 436	Mischief by fire	...	...	...	...	...	...	3	3	...	4	4	...	2	2	...	...	...	...	9	9	...	
454, 457	Lurking house trespass	7	...	...	5	5	3	13	2	1	8	...	...	13	1	...	5	1	1	61	9	5	
438, 459, 460	Do. with hurt	...	...	...	11	...	...	1	1	...	...	...	...	2	...	...	...	...	...	4	1	...	
392	Robbery	1	...	...	3	1	1	...	...	...	...	...	...	1	1	...	...	...	...	5	2	1	
394	Do. with hurt	...	...	...	2	1	...	2	1	...	...	...	...	1	...	...	2	1	...	7	3	...	
395	Dakaiti	...	...	...	...	...	...	...	...	...	5	5	4	...	...	...	1	1	...	6	6	4	
397	Do. with hurt, etc.	...	...	...	1	1	1	1	...	...	...	...	...	...	...	...	...	...	1	2	1	2	
494	Adultery	...	...	...	...	...	...	2	2	...	1	...	...	...	...	...	...	...	...	3	2	...	
	TOTAL	22	2	2	52	23	7	35	16	4	40	17	9	34	12	3	23	6	2	206	76	27	
	Tried by a Jury and by a Jury as Assessors.																						
302, 379	Murder, theft	1	1	1	...	...	...	1	1	1	...	...	...	...	...	...	...	...	...	2	2	2	
302, 392	Do. robbery	...	...	...	...	...	...	...	...	...	...	...	...	1	1	...	...	...	...	1	1	...	
302, 395	Do. dakaiti	...	...	...	...	...	...	...	...	...	1	1	1	...	...	...	...	...	...	1	1	1	
302, 411	Do. dishonest possession	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	1	1	...	1	1	...	
304, 379	Culpable homicide, theft	...	...	...	...	...	...	...	...	...	1	1	1	...	...	...	...	...	...	1	1	1	
323, 379	Hurt, theft	...	...	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	1	...	...	
328, 394	Do. deadly weapon, robbery with hurt	...	...	...	...	...	...	...	...	...	...	...	...	1	...	...	...	...	...	1	...	...	
328, 397	Do. as above, dakaiti	...	...	...	...	...	...	...	...	...	1	1	...	...	...	...	...	...	...	1	1	...	
333, 457	Do. lurking house-trespass	...	...	...	...	...	...	...	...	...	...	...	...	1	...	...	...	...	...	1	...	...	
307, 394	Attempt, culpable homicide	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	1	...	...	
397, 376	Unnatural offence, rape	...	...	...	1	1	...	...	...	...	...	...	...	...	...	...	...	...	...	1	1	...	
	TOTAL	2	1	1	2	1	...	1	1	1	3	3	2	3	1	...	1	1	...	12	8	4	
	GRAND TOTAL	24	3	3	54	24	7	36	17	5	43	20	11	37	13	3	24	7	2	218	84	31	

NOTE.—In preparing this statement, six cases, shown as "doubtful" in Appendix I, have been entered as "disapproved."

F. E. ELLIOT,
Judge.

No. 109. From JOHN DYSON, Esq., Officiating Judicial Commissioner, Oudh, to the Secretary to the Government of the North-Western Provinces and Oudh,—No. 1493, dated the 29th September 1890.

In reply to your letter No. $\frac{1648}{\text{VI}-598\text{-B.}}$, dated 26th June 1890, I have the honour to submit a memorandum drawn up by the Additional Judical Commissioner regarding the working of the system of trial by jury in Oudh.

2. On receipt of your reminder it was found that your original letter had not reached this office, and a copy had then to be obtained from your office.

No. 110. *Memorandum by Mr.* W. R. BURKITT, *Officiating Additional Judicial Commissioner, Oudh, dated the 24th September 1890.*

The materials available for a report on the working of the jury system in Oudh are extremely scanty, and I am unable to supplement them from any personal experience. In one Court only in Oudh, namely, the Court of the Lucknow Sessions Judge, are accused persons tried by jury. I find from the last printed report (1889) that only 22 cases were tried by jury last year, and I have ascertained that up to date in the current year 28 cases were so tried. With the exception of one case in each year, the Sessions Judge concurred in the verdicts of the jurors. In the one case in the current year the reference by the Sessions Judge came before me for disposal. The verdict was unquestionably and palpably wrong, but I think it was arrived at more through stupidity than perversity. The Sessions Judge (Mr. Moule, C. S.), I understand, recommends the total abolition of the system, but founds his recommendation on purely general grounds, and not because he was dissatisfied with the verdicts of the juries in Lucknow.

2. I am not prepared to offer any opinion as to the merits of the jury system as a means for the *repression* of crime. I really do not quite see how in any way it could be suggested that the employment of such a system is likely to have any favourable effect in that direction. And, at present, I see no grounds on which to recommend any change in the existing system, my experience of it being so limited.

No. 111. From CHHANNU LAL, Secretary to the Kashi Sujan Samaj, Benares, to the Secretary to the Government of the North-Western Provinces and Oudh,—No. 1199, dated the 22nd September 1890.

As resolved by the Kashi Sujan Samaj in the general meeting held on the 2nd August 1890, I beg to submit the following observation of the Samaj for the consideration of His Honour the Lieutenant-Governor of these Provinces.

The system of trial by jury has had full consideration, and the subject has been well discussed in almost every part of India. The utility and justness of the system has been fully established, and no doubt it will bear out fruits at longer date.

The system should never be abandoned but continued, and its value will soon be appreciated. The defect, if any, lies rather in the selection of jurors than in the system itself, and the method of selection must be improved.

No. 112. From W. C. BENETT, Esq., Secretary to the Government of the North-Western Provinces and Oudh, Judicial (Criminal) Department, to the Secretary to the Government of India, Home Department,—No. 3007, dated the 5th November 1891.

In continuation of paragraph 4 of the letter from this office, No. 307, dated 2nd February 1891, I am directed to report, for the information of His Excellency the Governor General in Council, that the local authorities at Cawnpore as well as Agra have been consulted on the subject of extending the jury system to those districts.

2. In reply it is represented that at Cawnpore excessive party feeling and local animosity against the police, which was aroused by incidents last year connected with an assault on one Hirdai Narayan, a Pleader, rendered the measure at the present time inopportune. The incident referred to led to a local inquiry by the Commissioner and had to be disposed of eventually by direct orders of the Local Government. Cawnpore is a centre of that form of local activity which is distinguished at present in these Provinces by a blind and unreasoning opposition to all Government officials, and to most Government institutions. The extension to that city of the jury system would in present circumstances be employed probably rather to serve the purposes of the malcontent section of the society than to the ends of justice. At Agra the religious dissensions for which the town was lately notorious, coupled with the

prejudice held by such classes as the Oswal banias, which form a numerous and influential section of the inhabitants against the infliction of capital sentences, and the unpopularity with which, judging from the experience obtained from assessors, the office of juror would be regarded there, are put forward in support of a similar conclusion. In the opinion of the Lieutenant-Governor and Chief Commissioner these objections are valid, and it is not, he thinks, desirable to pursue the question at present.

From F. C. DAUKES, Esq., Secretary to the Chief Commissioner of Assam, to the Secretary to the Government of India, Home Department—No. 145—J., dated the 14th January 1891. No. 113.

In continuation of this Office letter No. 4193J., dated 8th October 1890, I am directed to forward a report* on the working of the jury system in the Assam Valley, submitted by the Judge of the Assam Valley Districts, and to say that the Chief Commissioner, while by no means prepared to endorse all the opinions expressed by Mr. Luttman-Johnson in his report, agrees in the conclusion that there is no reason to think that the working of the jury system, as at present established in the Assam Valley Districts, has favoured the escape of criminals. Mr. Quinton would therefore not advocate any change in the existing system.

* Letter No. 1271, dated 17th November 1890.

From H. LUTTMAN-JOHNSON, Esq., C. S., Judge of the Assam Valley Districts, to the Secretary to the Chief Commissioner of Assam,—No. 1271, dated the 17th November 1890. No 114.

I have now the honour, with reference to letter No. 740-743, dated 31st May 1890, from the Secretary to the Government of India in the Home Department, to submit a report on the working of the system of trial by jury in the districts under my charge.

The Government of India's attention was called to this question in the course of enquiries into the working of the police and of the machinery for the repression of crime. It was alleged that the jury system had in some degree favoured the escape of criminals, and the Government of India asked for a report with special reference to this point. In my letter No. 906, dated the 12th September 1890, I submitted a report on this point, stating that trial by jury being practically limited to cases in which death is caused, it was difficult to say what effect it could have on the repression of crime generally. I now take up the general question how the system has worked, and what improvements are called for in its application.

2. In paragraph 20 of his review on the Police Administration of Assam for the year 1879, the then Chief Commissioner, Sir S. C. Bayley, remarked—

"The proportion of acquittals to convictions at the sessions was lamentably bad, 90 persons were acquitted to 99 convicted. In Bengal, in 1878, the percentage of persons acquitted at the sessions was 40, which was considered unduly high. In Assam it is 47. The Districts which show the worst results are Kamrup and Darrang, but nowhere save in Goalpara and Nowgong is the result really good, and in the latter district there was only one case sent up, in which all the eight persons were convicted. Some recent cases have given rise to great doubts in the Chief Commissioner's mind whether the jury system in the Assam Valley Districts is not wholly unadapted to the existing state of society and the frequent cause of serious failures of justice."

In letter No. 236, dated 18th August 1880, the Government of India called for a report on the subject. In his letter No. 155, dated the 25th March 1881, Mr. Ridsdale, then officiating as Judge and Commissioner, says that Colonel Agnew, who retired in 1876, after having served many years as Judge, thought that the jury system worked well. Mr. Ridsdale recommended the abolition of the jury system on general grounds, but does not appear to have found the system work badly in the short experience he had of it. He found ground for dissenting wholly from the opinion of the jury in two cases only out of eighteen, and those were both cases in which the jury had acquitted the prisoners. In letter No. 834, dated the 19th June 1882, Mr. W. E. Ward, who succeeded Colonel Agnew as Judge in 1876, gave his opinion that the system worked as well in Assam as elsewhere. He recommended the maintenance of the system on general grounds. He expressed views diametrically opposed to those expressed by Mr. Ridsdale in his letter above quoted. This, of course, necessarily follows from the fact that the experi-

3. With my letter No. 1009, dated the 18th May 1885, I submitted a note on trial by jury in Assam, in which I described the curious, but perhaps fortunate, accident by which the system had been extended to Assam. I find that, so far from being desirous of restricting trial by jury in my division, after a year's experience I wrote in my General Administration Report for 1884-85 as follows:—

"By Circular No. 17, dated the 2nd October 1887, officers are informed that the practice of committing cases which can be adequately dealt with by magisterial officers is inconvenient. The serious waste of time involved in requiring a Judge to proceed on tour solely for the purpose of trying a case is noticed. A serious failure of justice having occurred in Goalpara District, and a less serious but more notorious, failure having occurred in the Sibsagar District (Mr. Webb's case), owing to disinclination on the part of Magistrate to commit, I pointed out in my letter No. 902, dated the 12th June 1884, that the Judge no longer proceeds on tour solely for the purpose of trying cases, and that when a Magistrate elects to try a case himself, he practically deprives the accused of the right to a jury which was conferred on him in 1862. The Government of India having severely commented on the misconduct of the case above alluded to in the Sibsagar District, I asked the Chief Commissioner to take the orders of His Excellency the Governor General in Council with a view to the rescission of this circular. Though the circular has not been withdrawn, the magisterial officers understand, I think, that the Chief Commissioner did not intend to limit by executive order a discretion which is vested in them by law, and I have little fear that in future any failure of justice will be attributed to their disinclination to commit."

In my letter No. 106, dated the 26th January 1885, I gave an account of some cases which should, in my opinion, have been committed to a jury. And some other cases have since occurred.

4. I have consulted some of my subordinates on the subject of the working of trial by jury in my division.

Babu Jogesh Chandra Chatterji, Rai Bahadur, a distinguished Bengali Officer, says that juries are disinclined to convict on circumstantial evidence, and are not proof against outside influences.

Mr. A. C. Campbell, who is a native of the Province, and lately acted for me for ten months, simply says that while he was Judge the jury convicted in all the cases which came before him. He appears to think that the system works well.

Babu Kaliram Chaudhuri, B. L., an Assamese Extra-Assistant-Commissioner, thinks that the jury generally follow the direction of the Judge. He thinks that juries do not often convict innocent men, but they sometimes let off guilty persons to the surprise of the general public. He says the Assamese are wanting in public spirit, and do not like to serve as jurors. He thinks educated men do not like sitting with persons who have neither common sense, nor strength of character nor moral courage.

Babu Rudranath Barua, Honorary Magistrate, Nowgong, writes:—

"I entertain a very high opinion of trial by jury. In all big cases, trial by jury is very desirable. I find that people also very much like it. I am not aware of any innocent person being ever convicted by a jury. Nor has it come to my notice that any really guilty person has been let off in a jury trial. I am sure the people are satisfied with it. At least I never heard any of them to complain. There is no objection on the part of the people of this district to sit as jurors. Considered as an agency for repression of crime, the general opinion is that it has a very healthy effect."

Maulvi Rahamat Ali, Honorary Magistrate, Nowgong, writes:—

"In my humble opinion trial by jury is one of the best methods of finding out the guilt or innocence of persons charged with a serious crime. As far as I am aware, the people think well of it. I do not remember to have seen any case in which really innocent persons were convicted or really guilty persons, were let off. There are only a few people who object to sit as jurors, and in most cases their objections are based on sentimental grounds, such as excessive piety or religious scruples, etc. On the other hand, the bulk of the people have no objection to serve as jurors, and many think it as a distinction to be allowed to do so. In my opinion, trial by jury has a tendency to check crime, inasmuch as these trials are attended with a far greater degree of publicity than the ordinary trials before the Magistrate."

Babu Jagannath Barua, B.A., Honorary Magistrate and Tea-Planter in Sibsagar District, writes:—

"Trial by jury has been prevailing in Assam for a pretty long time, and the people are well satisfied with the manner in which it has worked on the whole. It may have failed to do

justice in one or two instances here and there, but that cannot destroy its value or usefulness. No human institution is perfect and free from occasional mistakes. Every one regrets the result of the recent Chartered Bank case at Calcutta, and the failure of justice occurred in a place where it was to be least expected. The jury system is perfectly in consonance with the genius of the people of Assam. In religious and social matters the people hold a trial called '*mel*' on the same principal as the trial of legal crimes, and in case the defendant is pronounced guilty, the *Pandit* or the *Gossain* passes the sentence prescribed by the 'Dharma Shastras.' Such a procedure in respect of religious and social offences has been in practice from time immemorial. There appears to be no tendency on the part of jurors to convict innocent persons, though there is some fear of their occasionally going wrong on the other way, that is to say, of letting off guilty persons. But in the latter case the law has provided a sufficent safeguard by empowering the Judge, when he differs from the jury, to submit the case for the orders of the High Court. The importance and sufficiency of this safeguard were illustrated in the well-known Gibbons case of Sibsagar a few years ago. As regards disinclination to serve as jurors, I believe on the whole there is hardly any disinclination worthy of remark. Every man of sense looks upon the liability to serve as a juror as a public duty which he owes to the society. The number of such men, however, is not at present so large as is desirable, but the spread of liberal education and the growth of enlightenment will steadily bring about a better state of things. At the same time, the extraordinary powers of the district officers leave only a small number of cases in Assam to be tried by the Judge before a jury. Trial by jury, although confined in Assam to the most heinous offences only, is a highly valued right. Government may take any steps it thinks necessary for minimising the chances of error, and in this public opinion will strengthen its hands, but no amount of mistakes will justify any serious modification of the right so long exercised."

That very distinguished officer, Babu Sarat Chandra Banerji, Rai Bahadur, who, though a native of Bengal, has served for 17 years in my division as a Sub-Divisional Officer and in other capacities, which have brought him into close relation with the people, writes as follows :—

"That portion of the community from which the men who find their way into the dock at sessions trials are, as a rule, drawn, are generally indifferent as to the machinery by which they are tried. In fact, they are too ignorant of the nature of the machinery itself to criticise it. They see the Judge performing certain functions and a number of other men, apparently more or less known to the local officials, helping passively in the ceremonial, and they hardly understand the respective parts played by each. The nice distinctions about the functions of the Judge and jury have scarcely any meaning for them. The educated and semi-educated few, with a somewhat larger number of an educated people with whom they are in touch, may, however, be said to hold an opinion favourable to the system. The feeling springs not so much from an appreciation of its abstract legal beauty as a system of trial, as from an idea more or less definite that it serves in a measure to hedge in the arbitrary power that is supposed to reside with the executive or rather the official element in the administration. Those whom the newspapers reach either directly or indirectly have also heard of the dignity of being 'tried by one's own peers.' There is the feeling of security, besides, engendered by the thought that those with whom the verdict more or less rests are men of flesh and blood like the criminal himself, liable to error, and therefore prone to forgiveness, instead of being, like the Judge, a mere impassive embodiment of abstract justice, without, as is thought, either human failings or feelings, so far as the conviction of offenders is concerned. Such being the case, it is not very likely that juries should 'often convict innocent persons.' They may possibly do so now and then from sheer inability to understand the legal or moral aspect of a train of circumstances, but such cases, I believe, can very seldom occur, with the Judge's summing up to enlighten them. They probably incline more towards mercy than to a rigorous vindication of justice; but I do not think they are ever found to be perversely wrong. The class of people from among whom jurors are drawn is at present somewhat limited in Assam, but their number is daily increasing. It will, however, be a long time yet before we have jurors with a will either strong or independent enough to override the supposed tendency of the Judge's direction. My impression is that the exceptional powers with which Deputy Commissioners in the Province are vested to try cases ordinarily triable by Sessions

Babu Madhab Chandra Bardalai, an Assamese Extra-Assistant Commissioner of 12 years' service, and a very useful public servant, writes:—

"Trial by jury is by all means desirable where men of position and intelligence are to be had to serve as jurors. In a province like Assam, the time is not yet ripe to expect the system to work satisfactorily, as we have hardly sufficient men here who can appreciate the good that result from such trials as means to further the ends of justice. The persons now selected to serve as jurors, with few exceptions here and there, generally lack in the average qualifications required of jurors, to whose verdict the law attaches so much weight. As far as I am aware the people seem to be quite indifferent to the present system of trial by juries. The general opinion is that the verdict of the jury is more or less dependent on the opinion of the Judge, and when the verdict happens to differ with the opinion of the presiding Judge, it is for the worse, resulting almost in every such case in the acquittal of guilty persons. I never remember to have heard that any innocent persons were convicted by juries under such circumstances. As regards the merit of trials by juries it is not considered by the people of Assam as a means for the repression of crimes. I think persons selected to serve as jurors much object to serve on juries simply because they are not generally men of independent means and education desirous of rendering their assistance in the administration of justice."

It will be seen that among the native officers, whom I have consulted, there is a difference of opinion regarding the value of the jury system. I think it is natural that officers on the permanent staff should think they would do the work better than juries do it, and should, therefore, display a tendency to depreciate the jury system. The consensus of opinion on the part of the Honorary Magistrates, all of whom answered my letter by return post, is, I think, very striking. I am glad that Babu Jagannath Barua has noticed the fact that, if the choice is not restricted to so-called educated men, jurors can be found who are constantly in the habit of deciding questions of fact on very conflicting, often false, evidence.

5. I submit a table showing the result of trials by jury in my division in the nine years ending 1889. It will be seen that out of 277 cases disposed of, 39 did not go to the jury. Out of the 238 cases which went to the jury, they convicted in 162 cases, or 68 per cent. In 10 cases out of 238, the Judge disagreed with the verdict of the jury partially, that is, generally where the jury found the prisoner guilty of culpable homicide, the Judge would have found him guilty of murder and *vice versâ* (*see* note hereto annexed). In 15 cases the Judge wholly disagreed with the verdict. In ten cases he thought it so patently wrong and unsustainable that he submitted the records under section 307 of the Code of Criminal Procedure for the orders of the High Court. In 8 of these cases the jury had acquitted the prisoner, in 2 they had convicted him on the less heinous, while the Judge thought he should be convicted on the more heinous, charge. It is worthy of notice that 5 out of the 10 cases were submitted by Judges officiating in the office for short periods.

6. In one of the 10 cases submitted to the High Court under section 307 of the Code, the accused was a European British subject. The following is a brief account of the other nine cases:—

(1) *Empress* versus *Thanuram Das, tried at Dibrugarh on the 18th June 1884.*—I submit copy of my letter No .947, dated the 24th June 1884, with which I submitted the record of the case to the High Court. The Court found the accused guilty of culpable homicide not amounting to murder, and sentenced him to rigorous imprisonment for two years.

The accused caused the death of a European, and the jury could not divest themselves of the notion that a native would not dare to strike a European unless provoked.

(2) *Empress* versus *Gokul Chawkidár and Musammat Jitni, tried at Sibságar on the 22nd December 1885.*—The accused had brought a charge of making a false charge under section 211, Indian Penal Code, against the manager of a tea-garden, which the Deputy Commissioner found to be false. He committed the accused for trial at the Sessions under section 211 for bringing a false charge. The Court convicted the accused persons under section 211, Indian Penal Code, and sentenced them to one year and nine months' rigorous imprisonment, respectively. I think that in this case the jury shared the popular opinion that the European tea-planters maltreat their employés and that the latter rarely if ever complain. This was a bad case, and shows that race animosity is strong.

(3) *Empress* versus *Kunjanram, tried at Sibsagar on the 10th January 1885.*—I submit copy of my letter No. 4—T., dated the 10 January 1885, with which I submitted

the record of the case for the orders of the High Court. The Court found the accused guilty of murder, and sentenced him to transportation for life.

(4) *Empress* versus *Andra Rajbangshi and ten others, tried at Gauhati on the 31st January 1888.*—I submit copy of letter No. 63—B., dated the 2nd February 1888, with which the Officiating Judge submitted the record for the orders of the High Court. The Court sentenced the accused persons to five years' rigorous imprisonment each.

(5) *Empress* versus *Tania Dafla and two others, tried at Dibrugarh on the 16th June 1888.*—The jurors found the accused No. 1 guilty of voluntarily causing grievous hurt under section 325, Indian Penal Code, and the accused Nos. 2 and 3 not guilty. I submit copy of my letter No. 508, dated the 26th June 1888, with which I submitted the record of the case to the High Court. The Court found the accused No. 1 guilty of committing murder under section 302, Indian Penal Code, and sentenced him to transportation for life, and acquitted accused Nos. 2 and 3.

(6) *Empress* versus *Kalikishore Gope, tried at Dhubri on the 3rd September 1888.*—I submit copy of letter No. 16—T., dated the 3rd September 1888, with which the Officiating Judge submitted the record to the High Court. The Court found that the accused committed the act, but acquitted him on the ground of insanity.

(7) *Empress* versus *Kobikishore Chakrabarti, tried at Gauhati on the 23rd November 1888.*—I submit copy of letter No. 884—B., dated the 23rd November 1888, with which the Officiating Judge submitted the record for the order of the High Court. The Court, agreeing with the jury, released the accused.

(8) *Empress* versus *Tita Sheikh, tried at Gauhati on 7th March 1889.*—I submit copy of letter No. 221—V., dated the 9th March 1889, with which the Officiating Judge submitted the record for the orders of High Court. The Court, agreeing with the jury, released the accused.

(9) *Empress* versus *Jaybeb Sarma, tried at Sibsagar on the 16th January 1889.*—I submit copy of letter No. 7—T., dated the 17th January 1889, with which the Officiating Judge submitted the record for the orders of the High Court. The Court found the accused guilty, and sentenced him to death.

Besides these cases, three very flagrant miscarriages of justice have occurred since I became Judge. Two I refer to in paragraph 4 of my letter No. 748, dated 17th April 1885, to your address. In neither of these cases was the jury altogether to blame for the result. The third case was one of riot and murder in the Goalpara District. The High Court transferred the case from Gauhati, where it would have been tried by jury, to Dinajpur, where it was tried by a Judge and assessors. The Judge found the prisoners guilty, the assessors found them not guilty; and on appeal to the High Court, they were acquitted. It was currently reported that the assessors had been bribed. The accused persons were undoubtedly guilty, as I think a Gauhati jury would have found unanimously.

7. Some of these are bad cases, and prove conclusively that Assam juries are not perfect. But we do not expect perfection. We should only condemn the system as applied to Assam, if we found it work worse there than elsewhere. In paragraph 2 of his letter No. 834, dated 19th June 1882, Mr. Ward showed that in Bengal the proportion of cases in which the Judge wholly dissented from the verdict was higher than in Assam. I find that for nine years ending 1889 the figures for Bengal are:—

Year.	Wholly disagreed.	Partially disagreed.
1881	11·4 per cent.	4·3 per cent.
1882	10·2 "	6·4 "
1883	9·5 "	5·5 "
1884	13·2 "	6·6 "
1885	10·0 "	8·9 "
1886	10·2 "	5·6 "
1887	9·7 "	12·6 "
1888	12·7 "	8·5 "
1889	8·7 "	8·7 "

found a different verdict in such a case, he does not submit the case to the High Court, if under the verdict given he can pass at all an adequate sentence.

8. The 277 cases committed to the sessions in the last nine years may thus be classified :—

Description of offences.	Number of head of crime.	Number of cases tried.
Chapter VIII.—Offences against the public tranquillity, sections 147, 148, rioting, etc.	4	3
,, IX.—Offences by or relating to public servants, section 167	6	1
,, X.—Contempts of the lawful authority of public servants, section 182	8	1
,, XI.—False evidence and offences against public justice, sections 193 and 195	9	9
Sections 201 and 211	10	7
,, XVI.—Offences affecting the human body, section 302, murder	19	87
Section 304, culpable homicide	21	50
,, 304 (a), causing death by rash or negligent act	21 (a)	5
,, 306, abetment of suicide	20	3
,, 314, causing miscarriage	26	3
Sections 323, 335, hurt, etc.	31	11
,, 325, 334, hurt with aggravating circumstances	30	49
Section 346, wrongful confinement	33	2
,, 354, criminal force, etc.	34	1
,, 363, kidnapping (other cases)	36	1
,, 376, rape	40	6
,, 377, unnatural offences	41	3
,, XVII.—Offences against property, etc., section 379, theft	43	1
Section 392, robbery	47	3
,, 396, dacoity with murder	49	2
,, 397, dacoity to cause death or grievous hurt	50	1
,, 395, dacoity other cases	51	3
,, 403, criminal misappropriation of property	53	1
Sections 408, 409, criminal breach of trust	54	2
Section 411, receiving stolen property	55	3
,, 446, mischief with aggravating circumstances	58	3
,, 452, ,, 451 } criminal trespass, etc.	61	7
,, 448 ,, other cases	62	1
,, XVIII.—Offences relating to documents, etc., sections 465, 467, and 468, forgery	63	7
Section 477, fraudulently destroying, etc.	65	1
Total	...	277

The ten cases in which the Judge disagreed wholly with the verdict of the jury, and submitted the records for the High Court's orders, may be classified :—

	Cases.
Chapter XI, offences against public justice, false charge under section 211	1
Do. XVI, offences affecting the human body, murder, under section 302	6
Grievous hurt, section 325	1
Wrongful confinement, section 342	1
Chapter XVIII, offences relating to document, etc., forgery, section 465	1
Total	10

9. While in the five years ending 1880, 138 cases were tried at Sessions, or 27·6 per annum in the nine years under report, 277 have been tried, or 30·7 per annum, so, though reported crime generally has increased, the number of cases tried at sessions has not increased. This would go to show that there has been no increase of such crime as comes within the cognizance of the Court of Sessions, that is, that trial by jury is not ineffective in the repression of cirme. Perhaps Circular No. 17, dated 2nd October 1877, may have had something to do with this. I would refer you to the correspondence noted in the margin on the subject of this circular. In my letter No. 1494, dated the 18th August 1886, I mentioned some cases which should have been committed to the sessions, and in my letter No. 924, dated the 15th September 1892, on the subject of habitual offenders, I have said that this circular may have deterred officers from committing to the sessions cases in which the accused are habitual offenders. I think it is clear that where trial by jury is almost confined to death cases, its effect in connection with the repression of crime must be very limited.

Letter No. 748, dated 17th April 1885, from the Judge to the Secretary.
Letter No. 747, dated 11th May 1885, from the Secretary to the Judge.
Letter No. 1203, dated 20th July 1886, to the Secretary.
Letter No. 1581, dated 6th August 1886, from the Secretary.
Letter No. 1494, dated 18th August 1886, to the Secretary.
Letter No. 1856, dated 31st August 1886, from the Secretary.
Letter No. 106, dated 26th January 1885, to the Secretary.
Letter No. 270, dated 12th February 1885, from the Secretary.

Cases of premeditated murder are rare. The number of persons sentenced to death in the last nine years has been 19, and of these seven were reprieved by the High Court. Cases where death is connected with offences against property are still more rare. I do not think that the abolition of trial by jury would affect crime in my division. I am even doubtful if a Judge and assessors would show a higher percentage of convictions than the jury show, because, though they are, I think, a little liberal in their application of "misdirection," the Judges of the High Court treat a Judge and jury with more respect than they do a Judge and assessors, as, indeed, by law they are bound to do. The statement hereto appended shows that out of 238 cases tried in the nine years under report, the jury convicted in 162 cases, or 68 per cent. If persons be considered instead of cases, the percentage in the nine years is 71·3.

In Bengal in 1889 the percentage of persons convicted in trials before the Court of Sessions (many of which are held with the aid of assessors) was 54·4. In 1888 it was 56·4. I have unfortunately not been able to find figures for jury trials separately in Bengal. Nor have I found statistics showing how far the Hon'ble Judges reverse the verdicts of juries as compared with verdicts of Judges sitting with assessors, which is a very important consideration where the value of the jury system is in question.

10. On referring to old calendars, I find that in seven cases since I have been Judge, a jury has convicted on what appeared to me to be insufficient evidence, that is, on evidence on which I would not have convicted myself. In the last nine years there have been 1,199 appeals to my court from the decisions of Magistrates. In 201 of these, or 16·7 per cent., the order of the lower court was reversed, in 121, or 10·0 per cent., it was modified. It is clear, I think, from this that juries' decisions have commended themselves to the Judge more frequently than those of Magistrates. I am far from thinking that the Appellate or Revision court is or is likely to be right in all cases. On the contrary, I think the lower or revised court, which hears the evidence, is more likely to be right. Still, as far as it goes, it is in favour of juries that the Judge dissents from their decisions less frequently than he does from those of Magistrates. I am far from thinking that the High Court is, or is likely to be, right in all cases; still, as far as it goes, it is in favour of juries that out of ten cases in which the Judge wholly dissented from the verdict of the jury, the High Court declined to interfere in two cases.

11. I hold a strong opinion, based on *à priori* grounds that the jury system is suited to the conditions under which India is at present ruled. I agree in the views expressed by Mr. Ward in paragraphs 7, 8, 9 of his letter of June 1882, and I could add other grounds on which I think that the jury system is suited to India. Perhaps this general opinion has prejudiced me in favour of the system as applied to my division. My early experience in India has also, I am afraid, prejudiced me in favour of the jury system. In my first two years of active service I committed many cases to a jury. Afterwards I came under a Judge and assessors, comparing the two systems (the judges were in both cases fair average specimens of their class), I formed a very strong *à posteriori* opinion in favour of the jury system. My six years' further experience of the jury system in Assam has rather strengthened the opinion I then formed. In spite of many artificial difficulties, difficulties—by no means inherent in the system, which will be noticed lower down—it works, I think, fairly well, as well, at least as any other system would work. And if the system works fairly well, when almost restricted to death cases, we may reasonably expect that it would work still better if it were extended to offences against property. I think the system works better here than it does in England, and perhaps better than it does in America.

12 It has been assumed that education, that is, learning, is essential, or at least desirable, in a juryman. That has not been my experience. This is partly because native gentlemen who have received an education in our schools are apt to think themselves clever, and to disregard common sense. I think Judges in England and America are of opinion that the best jurymen are ordinary men of business, accustomed to practical affairs. I suppose, if an English Judge wanted to select a bad juryman, he would choose one from among the professors, tutors, etc., at one of the English universities. Similarly, I find schoolmasters are the worst jurymen in my division. Soon after I joined the appointment of Judge of the Assam Valley Districts, I extended the jury list so as to embrace men of very little education. This was forced upon me: more jurymen were required, and educated men were not available. My best jurymen are superior ryots accustomed to preside in the village *raj* or *mel*. They give

a European on both my juries at the last sessions at Dibrugarh. Where race animosity or prejudice is not enlisted, the European settler makes, as a rule, a very good juryman, though his ignorance of the language often interferes with his usefulness. In another point, the system, as worked in Assam, has an advantage. The accused persons are very rarely rich, of high caste, or respectable. There is, therefore, seldom any danger of bribery or of sympathy with the accused on account of religious or social status.

14. Native jurymen in my division are, like native jurymen elsewhere, loth to take the responsibility of imposing a capital sentence. Out of 403 jurymen in the division for 1890, 27 are Marwari merchants, of whom a majority are Jains, and the rest very pronounced Vishnavites. It is one of the marks of a very advanced stage of civilisation, that people grow too humane to tolerate capital punishment. The time has not perhaps come when we could safely abolish capital punishment in India, but I cannot condemn a system which gives more practical effect to the feelings of the people than the law as it stands contemplates. A large number of my people, certainly the more educated classes, are in advance of the law in this matter. The result of course is that I only impose the capital sentence in very heinous cases. If I were a hanging Judge, my juries would not convict as readily as they do. Mr. Ward also was a "soft" Judge. This is a special disability attaching to the jury system here, because it is practically restricted to cases in which death has been caused, a restriction of which I do not approve (*see* my letter No. 1009, dated the 18th May 1895, and subsequent correspondence).

15. I have above alluded to artificial difficulties (paragraph 11) in the working of the jury system. So far as my division is concerned, sections 299 to 304, 319 to 322, of the Indian Penal Code, form almost an insuperable obstacle to the jury system. The difficulties which these sections present even to lawyers and men of learning are well known, and need not be detailed here. The task of explaining them to well-to-do ryots, and even to educated natives, in an Asiatic tongue is, I think, hopeless. I have to do this in nine cases out of ten that I try. If I had merely to explain murder, manslaughter, etc., in accordance with the principles of English common law, the task would be perfectly easy, even though the tongue is Asiatic. But here I am tied down to the wording of the law, and a small deviation may land me in misdirection. When a man kills another, the jury are perfectly competent to say whether he killed him, why he killed him, and whether the case should be considered a murder, carrying with it liability to the extreme penalty or whether it should be merely homicide. They would find it difficult to give reasons; perhaps the reasons, when given, would appear unreasonable. But the verdict would be right. When, however, they have to consider the nice distinctions of the sections I have named, they are puzzled, and, in trying to understand the law and my explanations, they sometimes make mistakes. This is more often the case with educated than with uneducated jurymen. The latter, feeling their inability to understand the law, surrender the attempt, and give a verdict according to their consciences. I cannot help thinking that trial by jury was not present to the minds of the members of the Law Commission when they framed these sections. I think improvement in the application of the jury system is called for here. Formerly, when an accused pleaded guilty to killing the deceased, the Judge decided whether he pleaded guilty to murder or culpable homicide of the first or second degree. But the High Court have lately pointed out that this is a question for the jury to decide, as it undoubtedly is. But it is just a question which, as I have pointed out, a jury is least competent to decide. The facts being all admitted, it would, I think, be better to leave the Judge to apply the law to the admitted facts.

16. A second difficulty is the language. If a European officer remained in one district all his service, he might acquire such a knowledge of the language as might enable him to charge juries efficiently. I commenced with Bengali (not the Bengali of the books). I then learned Behari (not the Hindustani or even Hindi of the books). I then learned Sylhetia, both eastern and western. I am now learning Assamese, of which there are many varieties. I cannot pretend to be competent to charge a jury in Assamese. With the assistance of a singularly able and efficient native ministerial officer, I manage perhaps better than any one else, not a native of the country, would; but I cannot help thinking that a Native Judge would be more congruous to a native jury, I may note that Mr. A. C. Campbell, who is a native of the Assam Valley, tried 12 cases with the aid of a jury while I was on furlough, and only disagreed with the jury partially in one case. Mr. C. J. Lyall, who necessarily is not conversant with our Babel of tongues, tried 43 cases, and disagreed with the jury wholly in four cases and partially in two cases.

17. A third difficulty is the rule that the Judge must not make notes, as Judges in other countries do. The Judge here is busily engaged in recording the evidence when he ought to be making notes. He is hardly able to look at a witness. This makes summing up very difficult. This rule only applies to mufassil Judges. When it was passed, perhaps, juries

were not contemplated in the mufassil. I think improvement is called for here in the application of the jury system.

18. I have no desire to criticise the action of the High Court in the matter of jury-trials. Though the Judges of that Court have no experience of trial by jury in Assam, still they all, or many of them, have had to charge juries in vernacular in other provinces. I have sometimes thought, probably wrongly, that the last paragraph of section 298 has been overlooked. The law allows me, and I think that, under the circumstances, I am bound to give my opinion in my charge on questions of fact relevant to the proceedings. I regret to say that this practice has occasionally led me into misdirection. I think that where a jury has found a man guilty, and the Judge has agreed in the verdict, a superior Court should be very chary of enquiring into what passed between the Judge and jury. I think that improvement is called for here in the application of the jury system. Where it appears to the superior court that the prisoners are guilty and have been properly convicted on the evidence, that is, that the verdict is not erroneous, the question of "misdirection" should not be gone into—*see* clause (*d*) of section 423 of the Code of Criminal Procedure.

Similarly, though the law is that the Judge shall sum up the evidence for the prosecution and defence, and shall record the heads of his charge to the jury, still the decision of the jury should not be impugned because the Judge has not recorded his remarks at length. The Judge must either write his remarks while the counsel for the prosecution and defence are speaking, in which case the heads of charge must be very briefly recorded, or after the conclusion of the day's work, when he may well have forgotten much that he has said to the jury.

19. I think in another direction improvement might be made in the application of the system of trial by jury. Generally, under sections 298, 299 of the Code of Criminal Procedure, the Judge decides questions of law and the jury decides questions of fact. But there is a very important exception to this rule. The question whether a confession is obtained by inducement, the question whether the inducement was still effective, indeed, all questions of fact under sections 24, 28, 29 of the Evidence Act, are under clause (*c*) of section 298 of the Code of Criminal Procedure, to be decided by the Judge. In death cases, admissions and confessions are the rule rather than the exception. The following is a typical case :—A gang of Garos robbed and murdered an old woman. Various circumstances led to suspicion of the gang. They were arrested and the police officer kept them apart, telling them they had better confess (or speak the truth), as in that case they might be made Queen's evidence. Five of them confessed, giving full particulars of the crime. They were at once taken before a Magistrate, who formally recorded their confessions. They were then sent into the station, and committed to the jail. Before the committing Magistrate these five and another confessed. The two principal accused were taken before the District Magistrate, where they gave a full account of the whole transaction. I held that the impression made by the police officer's "inducement" had been fully removed when the prisoners were taken before the committing Magistrate. The jury, I know, unanimously agreed with me in this view. The High Court, however, thought that the effect of the "inducement" continued. Now, if the question of fact whether the "inducement" continued had been one for the jury, there would have been no appeal to the High Court. I think there can be no doubt that five native jurymen on the spot are more competent to decide such questions of fact than Judges sitting in Calcutta. That they are more competent for such duties, is recognised by the law, which makes a jury's decision on questions of fact generally final.

20. I could point out some minor difficulties. At first I found juries inclined to give too much weight to the remarks of counsel, but I think they are now, with further experience, giving advocacy its true value. Prisoners are now often defended by the best talent available at the local bar, while the prosecution is often conducted by a zealous but unskilled Police officer—*see* my letter No. 513, dated the 19th June 1890, in which I proposed to appoint a Government pleader at Dibrugarh. Sometimes I see a juryman most uncomfortable on a chair, of which perhaps he has no experience out of Court; he would be much happier squatting on his hams on the ground. Then, owing to caste prejudices, we cannot shut jurymen up. Accordingly, when a case lasts more than one day, they spend the intervals in listening, at any rate to bazar gossip, perhaps to the advocacy of persons interested in the result. I think jurymen to be summoned should not be chosen by lot from the list (section 326 of the Code of Criminal Procedure). Persons to serve on a jury should of course be chosen by lot

Table showing the Result of Trials by Jury in the Assam Valley Division during the nine years ending 1889.

1	2	3	4	5		6		7		8		9		10	11
				Of cases in column 4.		Number of cases in column 4 in which Judge wholly disagreed, but did not submit record to High Court.		Number of cases in column 4, submitted to the High Court under section 307, Criminal Procedure Code.		Number of cases in column 7 in which High Court		Number of cases in Column 4, in which Judge partially disagreed with Jury.			
Years.	Number of cases tried.	Number of those which did not go to jury.	Balance tried by jury.	Acquitted by jury.	Convicted by jury.	Acquitted by jury.	Convicted by jury.	Acquitted by jury.	Convicted by jury.	Agreed with Judge.	Agreed with jury.	Where jury acquitted.	Where jury convicted.	Number of cases in column 4 in which Judge agreed with Jury.	Remarks.
1881	24	3	21	5	16	...	...	...	...	...	...	..	...	21	
1882	22	2	20	5	15	...	...	...	...	...	...	1	1	18	
1883	23	1	22	7	15	1	...	...	...	...	...	...	...	21	
1884	34	2	32	8	23	1	...	...	1	1	...	...	1	29	
1885	35	3	32	12	18	...	...	2	...	2	...	...	2	28	
1886	32	3	29	10	18	...	...	1	...	1	...	...	...	28	
1887	35	7	28	10	18	1	2	...	...	...	...	1	2	22	
1888	47	8	39	9	26	...	...	3	1	3	1	1	1	33	
1889	25	10	15	...	13	...	...	2	...	1	1	...	...	13	
Total .	277	39	238	66	162	3	2	8	2	8	2	3	7	213	

Note of five cases in which the Judge wholly disagreed with the Jury, but did not send up the case to the High Court during the nine years ending 1889. No. 115.

(1) Empress *versus* Maljung Garo and two others, under sections 302 and 304, Indian Penal Code, tried on the 14th December 1883, at Dibrugarh.—The jury found the accused not guilty. The Judge acquitted and discharged the accused with the remark—"The Judge did not concur with the verdict, but there were not sufficient grounds for referring the case to the High Court."

(2) Empress *versus* Chotalu Rajbongsi and 13 others, under sections 302, 304, 307, 325, 148, 107 and 186, Indian Penal Code, tried on the 10th May 1884, at Goalpara.—The jury found the accused not guilty of the offences charged. The Judge acquitted and discharged the accused, with the remark—"The Judge did not concur in the verdict, but did not think it so manifestly or certainly as perverse to require action under section 307."

(3) Empress *versus* Khahula Katani and three others, under sections 304, Indian Penal Code, tried at Nowgong on the 17th June 1887.—The jury found the accused not guilty. The Judge acquitted and discharged the accused with the remark—"The prisoners were, I think, guilty of voluntarily causing grievous hurt."

(4) Empress *versus* Sakur Bhuyan, under section 193, Indian Penal Code, tried at Sibsagar on the 23rd November 1887.—The jury found the accused guilty of the offence, and the Judge sentenced him to one year's rigorous imprisonment with the remark—"I should not have convicted this man."

(5) Empress *versus* Birbul Bhuyan, under section 193, Indian Penal Code, tried on the 23rd November 1887, at Sibsagar.—The jury found the accused guilty of the offence, and the Judge sentenced him to one year's rigorous imprisonment with the remark—"I should not have convicted the accused."

No. 190. Note referred to in paragraph 5 of ten cases in which the Judge partially disagreed with the verdict of the Jury during the nine years ending with 1889. No. 116.

(1) Empress *versus* Bolan Moran, under sections 302, 304 and 326, Indian Penal Code, tried at Dibrugarh on April 3rd, 1882.—Jury found the accused guilty of the offence of culpable homicide. The Judge sentenced the accused to transportation for life with the remark —"The Judge considered that the accused should have been found guilty of murder."

(2) Empress *versus* Saji Bewa, under section 304, Indian Penal Code, tried at Goalpara on June 19th, 1882.—Jury found the accused not guilty. The accused was acquitted and discharged by the Judge, with the remark—"The Judge did not agree with the verdict, but there was no sufficient ground for referring the case to the High Court."

(3) Empress *versus* Masst. Matia, under sections 302, 304 and 304 (*a*), Indian Penal Code, tried at Sibsagar on June 11th, 1884.—Jury found the accused guilty of the offence under section 304 (*a*), Indian Penal Code. The Judge sentenced the accused to two years rigorous imprisonment, with the remark—"The Judge thought the accused guilty of culpable homicide not amounting to murder."

(4) Empress *versus* Shibokanto Sarma, under sections 302, 304, Indian Penal Code, tried at Sibsagar on August 19th, 1885.—The jury found the accused guilty of culpable homicide. The Judge sentenced the accused to transportation for life, with the remark—"I think I should have found him guilty of murder. The jury thought exception No. 1 applied. Jury thought he intended to kill deceased persons."

(5) Empress *versus* Bhati Rajwar, under sections 302 and 304, Indian Penal Code, tried at Dibrugarh on August 24th, 1885.—The jury found the accused guilty of culpable homicide The judge sentenced the accused to transportation for life with the remark—"I think I should have convicted of murder. The jury gave prisoner the benefit of exception, and said he intended to kill his wife.

(6) Empress *versus* Rupon Munda, under sections 302 and 326, Indian Penal Code, tried at Tezpur on June 7th, 1887.—Jury found the accused guilty of the offence of culpable homicide. The Judge sentenced the accused to transportation for ten years with the remark—"The jury found the prisoner guilty under the second part of section 304, Indian Penal Code, I should have found him guilty under the first part."

(8) Empress *versus* Kasikoch, under sections 304 and 395, Indian Penal Code, tried at Gauhati on November 1st, 1887.—Jury found the accused guilty of the offence of causing hurt under section 323 The Judge sentenced the accused to one year's rigorous imprisonment with the remark—"I should have found prisoner guilty of causing grievous hurt."

(9) Empress *versus* Bhola Nath Gohain, under section 409, Indian Penal Code, tried at Dibrugarh on August 1st, 1888.—Jury found the accused not guilty. The Judge acquitted and discharged the accused with the remark—"The Judge did not think it necessary to submit the case to the High Court, though he did not altogether concur with the verdict."

(10) Empress *versus* Budram *alias* Mikir Dom, under section 302, Indian Penal Code, tried at Nowgong on November 28th, 1888.—The jury found the accused guilty of the offence of culpable homicide not amounting to murder. The Judge sentenced the accused to transportation for ten years, with the remark—"The jury thought there was sudden provocation (exception I to section 300). The Judge did not concur with the verdict but did not, under the circumstances, think it necessary to refer the case to the High Court."

No. 117 From H. LUTTMAN-JOHNSON, Esq., C.S., Judge of the Assam Valley Districts, to the Registrar, High Court, Calcutta,—No. 947, dated the 24th June 1884.

Empress *versus* Thanu Ram.

Under section 307 of the Code of Criminal Procedure, I have the honour to submit the record in the case of Empress *versus* Thanu Ram Das, tried at Dibrugarh on June 18th, 1884, for the orders of the Court. The accused struck deceased on the head with a heavy *muli* bamboo more than three feet long, and caused his death. There are no eye-witnesses, but the medical evidence and that of Pokhan goes to show that accused struck deceased more than one blow on the head. The evidence rather goes to show that deceased was lying down when struck. The prisoner, a few hours after the occurrence, made a statement to the Magistrate, in which nothing approaching to grave and sudden provocation is alleged. A fortnight later he stated that the deceased struck him, but by his account the assault does not amount to grave and sudden provocation.

I have accordingly refused to accept the verdict that prisoner acted on grave and sudden provocation. Though I am of opinion that the prisoner has committed culpable homicide not amounting to murder, I would have accepted a verdict of voluntarily causing grievous hurt.

2. I do not think that the act of the accused merits a very severe sentence. Had the jury found him guilty under either of the sections charged, I should have sentenced him to transportation or rigorous imprisonment for seven years.

No. 118. From H. LUTTMAN-JOHNSON, Esq., C.S., Judge of the Assam Valley Districts, to the Registrar, High Court, Calcutta,—No. 4—T., dated the 10th January 1885.

I have the honour to submit the record of the case of Empress *versus* Kunjan Ram tried at the court Sibsagar sessions, for orders under section 307 of the Criminal Procedure Code. The case was a very simple one. Prisoner, a frontier policeman, while suffering from the effects of *gunja*-smoking, shot two Cacharis whom he met on the road. There is no evidence whatever of insanity; indeed, in charging the jury, it did not occur to me to refer to. insanity. The pleader for the defence did not think of making any reference to the subject The jury found the prisoner not guilty on the ground of insanity. I think they should have found him guilty of murder, and asked the Court under section 307 to convict him of murder and to sentence him to transportation for life.

No. 119. From Colonel W. S. CLARKE, Offg. Judge of the Assam Valley Districts, to the Registrar of the High Court, Calcutta,—No. 63—B., dated the 2nd February 1888.

I have the honour to forward, under the provisions of section 307, Code of Criminal Procedure, for the orders of the Hon'ble the High Court, a case tried at the last sessions, ending January 31st, in which 11 persons were charged with "rioting, armed with deadly weapons," punishable by section 148, Indian Penal Code, also as members of an unlawful assembly guilty of rioting armed with deadly weapons in prosecution of the common object of such unlawful assembly, having voluntarily caused grievous hurt to certain two persons, *viz.*, to Bhoigu and Bhobira, punishable by section 326, Indian Penal Code, also as members of an unlawful assembly, guilty of rioting armed with deadly weapons in the prosecution of the common object of such assembly, committed murder by causing the deaths of two persons, *viz.*, Dhedai and Naoram, punishable under section 302 of the Indian Penal Code.

The evidence for the prosecution consisted of the depositions of a number of persons, who, with the others killed during the affray, constituted the party attacked by the accused,

and several other persons who have absconded and have been unable to be arrested and brought to justice.

Also the depositions of two eye-witnesses to the affray, who had no part whatever in it, but, whose house being in the immediate vicinity of the scene of the affray, had their attention attracted to what occurred, and give a circumstantial and detailed account of all that happened.

Also of the confessions of 10 out of the 11 accused before the Sub-divisional Magistrate of Goalpara, who conducted the preliminary enquiry, and finally committed the case for trial before the sessions.

The case is the last and most recent of a large number of cases of rioting, unlawful assembly, and murder committed by the followers of either the Burra or Chota Rani of Bijni, in Goalpara, in pursuance of the quarrels between them, and it is of the utmost importance that the punishment of the offenders should follow on their conviction before the Sessions Court in every case when the evidence is sufficient to ensure such conviction.

I was at the greatest pains to put the facts both for the prosecution and the defence before the jury, to explain the law to them, to call their attention to all facts proved and to all points necessary to be considered to enable them to arrive at a just and proper conclusion. Notwithstanding this, after retiring to consider their verdict for the space of 35 minutes, they returned to the Court, and through their foreman delivered a verdict of guilty of rioting, *but not armed with deadly weapons*, against all the accused.

I considered it necessary to call attention to the fact that at least two persons grievously wounded had actually been examined before them in Court, had shown the scars of the seven wounds received by them, and had related how such wounds had been caused by swords or *talwars*, how the whole of the evidence, as well as the statements of ten out of the eleven accused was in agreement as regards the fact that guns, swords, spears, and *lathis* were the weapons used, and desired them to consider whether they had not made a mistake.

On this they again retired for a period of about a quarter of an hour, and, returning, the foreman gave the verdict that only two of the accused were guilty of rioting *in the company of others, armed with deadly weapons*, but not themselves armed with deadly weapons, *and that the remainder of the accused were not guilty*.

I was careful to make them give me their answer on such charges, and have recorded question and answer as required by law, and, being entirely unable to agree with the verdict I recorded my opinion to that effect, and passed orders for the submission of the case for the orders of the High Court.

From H. LUTTMAN-JOHNSON, Esq., C. S., Judge of the Assam Valley Districts, to the Registrar of the High Court, Calcutta,—No. 580, dated the 26th June 1888. No. 120.

The verdict of the jury in the case noted in the margin appears to me to be unreasonable and perverse. I accordingly submit the record for the orders of the Hon'ble Judges.

Empress *versus* 1, Taniya Dafla, 2, Tamar Dafla, 3, Taram Dafla.

Charge under Section 302, Indian Penal Code.

2. The prisoners are accused of the murder of one Kephang. One of the accused (Taniya) admits that he and another man (Abor Taniya) killed the deceased. The jury have found him guilty of voluntarily causing grievous hurt. It is shown that a woman who lived with accused Taniya went off to deceased Kephang, that deceased Kephang and the woman went away to another village, that prisoner Taniya followed them there. The prisoner himself says he killed the deceased because he took away his wife. There is no ground for finding that accused Taniya did not intend to cause death, or such bodily injury as is likely to cause death.

3. I think the evidence of Tafang and the boy Goni must prevail over that of the woman Yopar. I do not, however, find that the opinion of the jury that Tasang (Taram) and Tama were not engaged in the affair is so perverse and unreasonale as their verdict in the case of Taniya. If they had acquitted Tarang (Taram) and Tamar and found Taniya guilty of murder, I should not have submitted the case for the orders of the Hon'ble Judges. On the other hand, there can, I think, be no doubt that the three accused were engaged in the murder. There is absolutely no reason why Tafang and Goni should say they were engaged in it if they were not.

The case was tried by me to-day, with the assistance of a jury. The jury returned a verdict of "not guilty," and explained that they found it not proved that the accused committed the act charged, and that they did not acquit him simply on the ground of insanity. I had some conversation with the jury, which I did not record in a formal manner at the time, and ascertained that they based their verdict on the fact that there was no eye-witness of the murders, or possibility of the blood, with which the accused was stained, having been sprinkled on him while the blows were being inflicted by some one else (in spite of the fact that there was, as I ascertained by carefully questioning the witnesses, a screen between the two compartments, in one of which the accused's bed was, and in the other Chandra Biswas), and upon the non-production of the accused's blood-stained *dhuti* (for which they did not ask during the trial, and regarding which no doubt was suggested in the course of the case). The foreman also mentioned the absence of motive, which I dwelt on in my charge as a ground for believing the prisoner to be insane, as a ground for believing that he did not do the deed at all.

It appears to me that the verdict was distinctly perverse. I think that the facts proved pointed clearly to the accused as the perpetrator of the murders, but that he was probably insane when he committed them. I would ask the Hon'ble Court, if it should be of the same opinion, to modify the simple acquittal to which the verdict of the jury now amounts, into a judgment of acquittal on the ground of lunacy under section 470 of the Criminal Procedure Code. Such a finding will enable the Executive Government to take precautions against further outbreaks of violent insanity on the part of the accused, who appears to me to be liable to attacks of lunacy of an exceedingly dangerous kind.

No. 122. From—C. J. LYALL, Esq., C.I.E., C.S., Offg. Judge of the Assam Valley Districts, to the Registrar of the High Court, Calcutta,—No. 884B., dated the 23rd November 1888.

Empress *versus* Kali Kishore 1 Chakravarti and others.

Charges under sections 302, 330 and 342, Indian Penal Code.

Under section 307 of the Criminal Procedure Code, I have the honour to submit the record of the case noted in the margin for the orders of the High Court.

2. The case was tried by me with a jury at Gauhati (at which place the trial was held on an application by the Deputy Commissioner, stating that it was impossible to obtain an impartial jury owing to the influence of the prisoners in the Goalpára district) on the 12th, 13th, 14th and 15th instant. The prisoners were charged with several offences, the most important being the murder of one Umakanta Rájbansi, with minor charges of voluntarily causing hurt with a view to extract a confession of restoration of stolen property, and of wrongful confinement, and the jury acquitted them all under all the charges. I agreed with the jury that the evidence was not sufficient to establish the gravest charge, that of murder; but I considered that it was sufficient to establish, at least against the principal men among the accused, Kali Kishore Chakravarti and Ghana Kanta Chakravarti, the minor, but still very serious, charges under sections 330 and 342 of the Indian Penal Code.

3. The reasons why I come to this conclusion are briefly stated in my judgment of the 15th instant, and I think that by a perusal of that judgment and the heads of my charge delivered on the 14th instant, the Hon'ble Judges will be sufficiently placed in possession of the view I take of the case. There is no doubt from the statements of the accused persons, that a theft had taken place at the house of Bhim Nath Chakravarti on the 6th January, and that on the 7th January a meeting of Brahmans was held at Bhim Nath's house, at which the deceased Umakanta, with the witnesses Darbaru and Puhatu, was put through a close examination as to his suspected complicity in the theft. There is no doubt also that, on the afternoon of 7th January, Umakanta died in an out-house in Bhim Nath's homestead by his throat being cut. The accused persons say he committed suicide. The prosecution attempted to prove that he was murdered. It is not necessary to discuss which is the most probable of these two stories. Taking the hypothesis of suicide, it is almost inconceivable to me that a person of Umakanta's race and position in life would have killed himself as described, unless he had been subjected to some sort of ill-treatment of the nature detailed by the witnesses Puhatu and Darbaru. If, on the other hand, he was really murdered, it seems to me still more probable that before proceeding to that extremity, the accused Brahmins could have tried some means of bringing him to confess or restore the property.

4. The jury apparently (since there was throughout the case no suggestion that the witnesses were animated by ill-will towards the Brahmans, their superiors in station, and their masters and landlords) arrived at the conclusion that the case was one got up by the police. I was not able to share this view. That the case was twice reported by the police

accused, demeanour of the witnesses did not appear to me to be that of persons who are telling a fabricated tale, though I thought that they were sensible of the enormity they were committing in giving evidence at all against persons of so sacred a character as the accused Brahmans. It was only to be expected, considering the caste and status of the accused, that the police would meet with great difficulties in establishing a case against them, and I have discovered nothing which leads me to suppose that the case has been dealt with by the investigating officer in an irregular or unusual manner.

5. With these remarks, I beg to submit the case for the consideration of the High Court.

From C. J. LYALL, Esq., C.I.E., C.S., Offg. Judge of the Assam Valley Districts, to the Registrar of the High Court, Calcutta,—No. 221—V., dated the 9th March 1889. No. 123.

Queen-Empress *versus* Tita Sheik.
Charge under section 302, Indian Penal Code.

Under section 307 of the Criminal Procedure Code, I have the honour to submit the record of the case noted in the margin for the orders of the High Court.

2. The majority of the jury (four out of five) have found the prisoner not guilty of the offence charged, and also not guilty of any minor offence of which they might have considered him guilty. The jury deliberated for a considerable time, and after they announced their disagreement, I sent them back again to consult before accepting their verdict, which I finally recorded only upon an assurance from the foreman that there was no prospect of their agreeing.

3. The facts of the case are fully stated in my charge. It appears to me that the jury ought to have found that the accused Tita did cause the death of his wife by strangling her, but should have found that he received grave and sudden provocation, and should, therefore, have brought him in guilty of culpable homicide not amounting to murder.

4. The jury, as often happens, based their verdict of acquittal upon the absence of the evidence of eye-witnesses. It is often difficult to make a jury realise the full force of circumstantial evidence, when there is no witness who professes to have actually seen the accused commit the deed. In this case, the circumstantial evidence appears to me to be sufficient for a conviction. The medical evidence is to my mind absolutely conclusive against the theory of suicide, and if the deceased was strangled by some one, and not by herself, the inference appears to me irresistible that it was the accused who strangled her. It was with him that the quarrel took place, which is put forward as the only explanation of her death, and the demonstration of the falsity of the theory of suicide, which is the cause of death alleged by the accused, leaves upon him the onus of clearing himself from the charge of causing her death. He was the person with whom she quarrelled, and the first person in contact with the body after death. He has not shown that any one else but him caused her death, and has instead put forward a story of suicide, which has been demonstrated to be false.

5. It appears to me that if the verdict of the majority of the jury was accepted, there would clearly be a failure of justice, and I, therefore, submit the case for the consideration of the High Court.

From C. J. LYALL, Esq., C.I.E., C.S., Judge of the Assam Valley Districts, to the Registrar of the High Court, Calcutta,—No. 7—T., dated the 17th January 1889. No. 124.

Queen-Empress *versus* Joydeb Sarma.
Charge under section 302, Indian Penal Code.

Under section 307 of the Criminal Procedure Code, I have the honour to submit, for the orders of the High Court, the record of the case noted in the margin, tried by me at Sibsagar with a jury on the 16th instant.

2. It will be seen that the jury found by their verdict (which I took down at the dictation of the foreman) that the accused did cause the death of his mother Bharwani and his brother Padma Nath, but acquitted him on the ground that at the time of doing the deed he was temporarily insane. They explained their views (the explanation was volunteered) by saying that they came to this conclusion from the absence of apparent motive, and from the fact that the prisoner had been ill for some time before the occurrence.

3. In my charge I endeavoured to explain to the jury that the burden of proof of such unsoundness of mind, as would, under section 84 of the Penal Code, prevent the act from being an offence, rested under section 105 of the Evidence Act, on the accused, and that they should not assume merely from the circumstance of the act that it was the work of an insane person unless it was impossible that it could be anything else. In the present case, apart from the act itself, there is absolutely no evidence of insanity. The brothers and uncle of the accused and their neighbour Jurai (witness No. 4) say that he showed no symptoms of

madness. He showed none at the time the deed was done, and while in custody and before the Court behaved in a perfectly rational manner. The illness from which he had been suffering (apparently a low fever) was not such as to require medical treatment while he was awaiting trial.

4. For these reasons, it appears to me that the jury, in coming to the conclusion that the accused was insane merely from the circumstances of the crime, erred in law and dispensed with proof, which they should have required.* I think that the accused was clearly guilty of murder under both the charges on which he was tried.

* *Vide* case of Chandra Banerjee, 13 B. L. R., 20, appendix.

No. 125. From C. J. Lyall, Esq., C.I.E., Secretary to the Government of India, to the Chief Secretary to the Government of Madras,—No. 1105, dated the 25th August 1892.

I am directed to reply to your letter No. 2096 (Judicial), dated the 29th December 1890, forwarding, with enclosures, a report on the working of the jury system in Sessions Courts in the Madras Presidency.

2. It is understood that under existing orders the jury system is in force in all the Sessions Divisions of the Presidency except those comprised in the Agencies of Ganjam, Vizapatam and Godavari, and that all offences falling within the following sections of the Penal Code: 379, 380 and 382 (theft), 392 to 395, 397 to 399 and 400 to 402 (robbery and dacoity), 411, 412 and 414 (receiving or possessing stolen property), 451 to 459 and 461 (house-trespass in order to commit theft, etc.), and also abetments of and attempts to commit any such offences, are triable by jury before the Court of Sessions.

3. The result of the recent inquiry, so far as the Madras Presidency is concerned, is to show that the system of trial by jury, as hitherto carried out, has not worked in a satisfactory manner. The Government of India have not received the opinions of any District Executive officers who may have been consulted on the subject by the Madras Government. Among the Sessions Judges whose reports have been forwarded there is, as might have been expected in such a matter, a wide divergence of opinion as to the merits and working of the system. The Honourable the Chief Justice and Judges of the High Court, with the exception of Mr. Justice Muttuswami Aiyar (whose opinion, however, is not altogether favourable), have recorded minutes generally unfavourable to the working of the jury system. The Honourable the Chief Justice, Mr. Justice Handley and Mr. Justice Weir recommended that a right of appeal should be granted on the facts against the verdicts of juries; and this recommendation seems also to be concurred in by Mr. Justice Best. Mr. Justice Muttuswami Aiyar, Mr. Justice Handley and Mr. Justice Weir also recommend that extension should be given to the principle of section 307 of the Criminal Procedure Code so as to admit of a reference being made by the Sessions Judge under this section in all cases in which he differs from the verdict returned by the jury.

4. His Excellency the Governor in Council is of opinion that the jury system is unsuited to the country. He supports the recommendation that section 307 of the Procedure Code shuld be extended so as to render a reference to the High Court obligatory in every instance in which the Sessions Judge takes a different view of the case from that adopted by the jury. A similar proposal has been made by His Honour the Lieutenant-Governor of Bengal, who has further suggested the following changes in the law with a view to remove the defects which exist in the present system of trial by jury in that Province:—

(1) that it should be made incumbent upon the Sessions Judge to ascertain and fully record the reasons of the jury for their verdict; and

(2) that a right of appeal should be granted on the facts against the verdict of a jury, when the jury is not unanimous, unless the Judge records his agreement with the majority.

5. I am now to communicate the conclusions at which the Governor General in Council has arrived after careful consideration of the entire question. In the opinion of His Excellency in Council, derived from a review of the reports from other Provinces as well as from the Madras Presidency, the defects of the present system of trial by jury appear to be mainly attributable to two causes—

(1) to the extension of the jury system (*a*) to areas to which it is unsuitable, and (*b*) to classes of offences which, as the experience now gained has shown, ought not to be cognizable by juries;

(2) to the fact that the provisions of section 307 of the Criminal Procedure Code, which were intended to give Sessions Judges and the High Courts power to remedy and correct wrong verdicts, have failed to fufil this intention.

6. As regards the first of these causes, section 269 of the Criminal Procedure Code confers on Local Governments and Administrations complete liberty of action in respect of the determination of the areas within which offences shall be tried by juries as well as of the classes of offences which shall be so triable. The Governor General in Council has no desire to interfere with, or to limit by legislation or otherwise, the discretion entrusted to Local Governments in the matter; but he is constrained to express his concurrence in the opinion stated in the reports of Messrs. Davis and Irvine forwarded with your letter under reply, and also in many of the reports received from other Local Governments, that cases of murder and culpable homicide should be excluded from the cognizance of juries, and he is further inclined to agree in the view that cases of rioting under chapter VIII of the Penal Code should be excluded. These offences, however, are not now triable by jury in the Madras Presidency. The classes of cases which have been declared so triable seem to be well chosen and suitable, and the only change in this respect which the Governor General in Council desires to suggest for the consideration of the Madras Government is whether offences under chapter XX of the Penal Code, relating to marriage, might not with advantage be made over to juries. On the other hand, the Government of India doubt whether the jury system is thoroughly suitable to all the areas to which it has been extended: and they are by no means satisfied that the defects which have been brought to notice in the working of the system are not, in some measure, due to its premature and wholesale extension to every district throughout the Presidency. This, however, is a matter entirely for the consideration of the Local Government.

7. The difficulty under the second head seems to arise from the interpretation which Sessions Judges and Judges of the various High Courts place or have placed on their duty in making or dealing with references under section 307 of the Criminal Procedure Code. In many instances a strong disinclination has been exhibited by the High Courts to interfere with the verdicts of juries, and as a consequence Sessions Judges are often reluctant to make references under this section. It has been proposed by the Governments of Madras and Bengal that the law should be so amended as to make such references compulsory in every case in which a Sessions Judge disagrees from the verdict of the jury. The Governor General in Council is however, unwilling to adopt this course. Section 307 in its present form prescribes that the Sessions Judge shall refer such cases when he considers that there has been a substantial failure of justice, and it confers on the High Court the fullest power to deal with such references. It does not seem to the Government of India to be desirable that the Judge should be bound to refer cases in which the failure of justice is not quite clear—such as cases in which he differs from the jury on some minor point, or those in which the evidence is possibly so nearly balanced that even trained Judges might differ in their conclusions on it. His Excellency in Council has not overlooked the fact that there is a strong body of opinion among the Honourable Judges of the Calcutta and Madras High Courts in favour of the proposal in question; but on the whole he would prefer not to make an alteration in the law which might have the effect of encouraging unnecessary references. If the practice of the High Court is based on the principles laid down in 1887 by Prinsep and Pigot, JJ., in the case of Itwari Sahu,* and in 1890 by Collins, C.J., and Handley, J., in the case† of Guruvadu and another, no such alteration of the law is required; while on the other hand, if a different and narrower practice is allowed to prevail, the mere fact of reference under section 307 being obligatory on the Sessions Judge would probably not affect the view which the High Court is likely to take of its duty in dealing with these references.

* I. L. R., 15 Calcutta, 269.

† I. L. R., 13 Madras, 343.

8. It has, however, been suggested by the Bengal Government that, in order to facilitate the disposal of references under section 307 of the Code, the Sessions Judge should be specifically empowered or required to ascertain and record the reasons of the jury for their verdict. The Governor General in Council admits that the present system is defective, in so far as the Judge, although bound by the Code to refer to the High Court cases in which he considers this course to be necessary for the ends of justice, is not in a position to place before the High Court in a proper shape, materials for determining whether the verdict is a wrong one or not. His Excellency in Council, however, is averse to requiring or authorizing Sessions Judges to question juries as to the reasons for their verdict except in cases already provided for by section 303 of the Code. In the first place, no room should be allowed for anything approaching to a cross-examination of the jury by the Judge. Besides not only would it be difficult for untrained men, such as the jurors

would be in most cases, to formulate their reasons in a satisfactory shape; but it is doubtful whether a mere statement of their reasons would help materially towards the disposal of the case. It seems to the Government of India that a statement of the *facts* found by the jury, rather than of the reasons for their finding, is what is desired for the purpose of enabling a satisfactory decision to be arrived at as to the correctness of their verdict. His Excellency in Council would, therefore, adopt the alternative proposal made by the Judges of the Bombay High Court named in the margin, and amend the law so as to empower the Sessions Judge, if he thinks fit, whether before or after a general verdict has been taken, to require special verdicts from the jurors on particular issues of fact, and perhaps on the general credibility of particular evidence. Such an amendment of section 303 would be sufficient both to place the Sessions Judge in a position to decide whether a reference should or should not be made to the High Court under section 307, and to furnish the High Court with proper materials for determining whether the verdict is one which should be upheld or not. This point has accordingly been noted for further consideration when the Criminal Procedure Code may next come under revision.

Mr. Justice Birdwood.
" " Telang.
" " Candy.

9. Lastly as to the question of allowing an appeal on the facts from the verdict of a jury. The concession of a right of appeal in one form or another is advocated by the Bengal Government, by a strong majority of the Judges of the Calcutta High Court, and by some of the Judges of the Madras High Court; and it has been forcibly contended that mistakes on the part of a jury, like other supposed judicial errors, should be left to be brought before the Appellate Court by the parties concerned instead of by the presiding Judge. Accordingly the Government of India have very anxiously considered whether section 418 of the Code should not be amended by allowing an appeal on the facts either when the jury is not unanimous and the Judge does not approve of the verdict of the majority, or when the opinion of the jury is unanimous but the Judge expresses a positive disapproval. The latter rule would be in accordance with section 307 as it now stands, while the former would do little more than extend to Sessions Courts, *mutatis mutandis*, the rule which prevails in High Courts under section 305.

But after due deliberation, and while attaching full weight to the expressions of opinion above quoted, the Governor General in Council has come to the conclusion that it is not expedient, at all events without some further trial, to permit an appeal to be made against the decision of a jury. It is not clear to His Excellency in Council what advantage there would be in retaining the jury system at all if it is to be reduced so nearly to the level of a trial with assessors; and he is reluctant to abolish the distinctive feature of trial by jury, the comparative finality of the verdict, until all other available methods for the improvement of the system have been exhausted. The Government of India are, moreover, of opinion that no such change in the law will be really necessary in the Madras Presidency where capital offences and other cases unsuitable for trial by juries are already excluded from their cognizance; and that the ends of justice will be adequately secured if the safeguard against failures of justice provided by section 307 of the Criminal Procedure Code is strengthened in the manner proposed in the preceding paragraph, and if any districts which the Madras Government may on consideration find unsuitable for the jury system are excluded from its operation.

No. 126. From C. J. Lyall, Esq., C. I. E., Secretary to the Government of India, Home Department, to the Secretary to the Government of Bombay, Judicial Department,—No. 1106, dated the 25th August 1892.

I am directed to reply to your letter No. 7105, dated the 19th December 1890, forwarding, with enclosures, a report on the working of the jury system in Sessions Courts in the Bombay Presidency.

2. It is stated in paragraph 2 of your letter that (excluding the City of Bombay itself which does not fall within the scope of the recent inquiry), the system of trial by jury is in force in the districts of Poona, Ahmedabad, Belgaum, Thana and Surat, and in the City of Karachi. The classification of offences triable by jury is based on the degree of punishment attached to them. In Ahmedabad all offences punishable with death, in Belgaum, Thana, Surat and Karachi, all offences punishable with death, transportation for life or imprisonment for ten years, and in Poona all offences so punishable which fall within Chapters VIII, XI, XII, XVI, XVII and XVIII, of the Penal Code, are triable by jury before the Court of Sessions.

The circumstances of the City of Karachi appear to be somewhat exceptional. The report of the Judicial Commissioner in Sind seems to show that more intelligent material for forming a jury is available in that city than is ordinarily the case, and that in this respect the conditions of trial by jury in Karachi differ from those of ordinary districts in the interior of a Province and resemble to some extent the conditions prevailing in Presidency towns. The remarks which follow in this letter should not, therefore, be taken as applying to the City of Karachi except so far as the Bombay Government, having regard to local circumstances, may consider them to be applicable.

3. The result of the recent inquiry, so far as the Bombay Presidency is concerned, is to show that the system of trial by jury, as hitherto carried out, has worked in a manner which must, on the whole, be regarded as unsatisfactory. Its failure has been most marked in respect of capital offences, particularly in the districts of Ahmedabad, Surat and Belgaum, owing to habitually perverse verdicts arising out of the disinclination of the jurors on religious or conscientious grounds to convict in such cases. Among District Judicial Officers who have been consulted in the matter, there is, as might have been expected, considerable divergence of opinion as to the merits and working of the system; but the Governor General in Council notices that those Sessions Judges who have had experience of its working in the three districts mentioned above are agreed in condemning it, so far as capital cases are concerned. The Government of India have not been favoured with the opinions of any Divisional Commissioners or District Executive Officers who may have been consulted on the subject by the Bombay Government. Turning to the minutes of the Honourable the Chief Justice and Judges of the Bombay High Court, to whose opinion in such a matter the Governor General in Council feels bound to attach the greatest importance, His Excellency in Council finds that the Judges are generally agreed as to two serious defects in the existing system:—first, as to the unsuitability of the present classification of offences triable by jury; and secondly, as to the highly unsatisfactory results of trials in capital cases. As shown by the majority of the Judges the system has been somewhat incautiously introduced, offences punishable with death and imprisonment for a long period being entrusted to juries at the outset, instead of cases of less serious offences such as those which have been declared triable by jury in Madras and the North-Western Provinces and Oudh, and which as a rule either involve simpler issues or are suitably punished with a comparatively light sentence. It is recommended by Mr. Justice Birdwood, Mr. Justice Telang and Mr. Justice Farran that capital cases should be withdrawn from the cognizance of juries in Ahmedabad, Surat and Belgaum. Mr. Justice Birdwood, Mr. Justice Candy and Mr. Justice Telang further recommend that the procedure for trial by jury should be modified so as to authorize the Sessions Judge to require the jury to return special verdicts on particular issues put to them by him.

4. The Governor General in Council understands that His Excellency the Governor of Bombay in Council concurs substantially in the conclusions of the Bombay High Court both as to the unsuitability of the present classification of cases triable by jury and as to the failures of justice caused by the unsatisfactory results of jury trials in capital cases. From paragraph 8 of your letter it appears that the jury system is considered (if Bombay and Karachi are excluded for the reason given in paragraph 2 above) to have been moderately successful only at Poona and Thana. The general conclusion of the Bombay Government is that, while the further extension of the system is undesirable, it should not be abolished in any Sessions division where it now exists, except on clear proof for the particular division of flagrant abuse or failure.

In paragraph 9 of your letter it is stated that the Governor in Council considers that, where the system is retained, all cases committed for trial and triable exclusively by the Sessions Court (except political cases and offences relating to the Army and Navy) should be tried by jury. At the same time it is explained that the present system is not devoid of scandal in respect of capital cases; and the Government of India understand that the Bombay Government are prepared to exclude these cases in districts such as Ahmedabad. For reasons which will be stated presently the Government of India are unable to agree as to the expediency of all, or even the majority of, offences triable exclusively by the Sessions Court being included in the list of offences triable by jury. Nor does the alternative proposal, made in paragraph 10 of your letter, that the list of such offences should be subject to annual revision and republication according to the results of actual experience of the system in each year, altogether commend itself to them; in their opinion, such frequent changes would be most undesirable.

5. The Bombay Government have made no proposals for amending the Criminal Procedure Code with a view to the improvement of the present system of trial by jury. Certain suggestion already referred to have, however, been made by some of the Judges of the Bombay High

Court; and it will be convenient to state here, for the information of His Excellency the Governor in Council, the following proposals which have been made by other Local Governments, namely:—

(1) that a reference to the High Court should be made compulsory in all cases in which the Sessions Judge thinks that the verdict of a jury is contrary to the weight of the evidence;

(2) that it should be made incumbent upon the Sessions Judge to ascertain and fully record the reasons of the jury for their verdict; and

(3) that a right of appeal should be granted on the facts against the verdict of a jury when the jury is not unanimous, unless the Judge records his agreement with the majority.

6. I am now to communicate the conclusions at which the Governor General in Council has arrived after careful consideration of the entire question. In the opinion of His Excellency in Council, derived from a review of the reports from other Provinces as well as from the Bombay Presidency, the defects of the present system of trial by jury appear to be mainly attributable to two causes:—

(1) to the extension of the jury system (*a*) to areas to which it is unsuitable, and (*b*) to classes of offences which, as the experience now gained has shown, ought not to be cognizable by juries;

(2) to the fact that the provisions of section 307 of the Criminal Procedure Code, which were intended to give Sessions Judges and the High Courts power to remedy and correct wrong verdicts, have failed to fulfil this intention.

7. As regards the first of these causes, section 269 of the Criminal Procedure Code confers on Local Governments and Administrations complete liberty of action in respect of the determination of the areas within which offences shall be tried by juries as well as of the classes of offences which shall be so triable. The Governor General in Council has no desire to interfere with or to limit by legislation or otherwise the discretion entrusted to Local Governments in the matter; but he is constrained to express his concurrence in the opinion stated in many of the reports forwarded by Local Governments that cases of murder and culpable homicide should be excluded from the cognizance of juries, and he is further inclined to the view that cases under Chapter VIII of the Penal Code should be excluded. The necessity for withdrawing capital cases seems to the Government of India to have been clearly established by the reports received from Bengal as well as from the Bombay Presidency. Many of the reports forwarded by Local Governments also point to the conclusion that it is desirable to exclude cases under Chapter VIII of the Penal Code, as (among other reasons) it seems to be extremely difficult or almost impossible in such cases to get the jury to consider separately the evidence against a number of prisoners tried together for the same offence (as generally happens in charges of rioting and to discriminate between the parts of the evidence which bear against individual prisoners. His Excellency in Council would, therefore, ask the Bombay Government to consider whether action should not be taken under section 269 of the Code to revise the list of offences triable by jury, and in particular whether capital cases should not be removed from the list in Ahmedabad, Belgaum and Surat, as recommended by Mr. Justice Birdwood, Mr. Justice Farran and Mr. Justice Telang. The present system of classification in force in the Bombay Presidency appears to the Governor General in Council to be open to grave objection. In Ahmedabad, for instance, where the failures of justice in capital cases are reported to have been so notorious, only offences punishable with death are now triable by jury.

8. It follows from what has been said in the preceding paragraph that the Government of India are unable to concur in the view that all offences triable exclusively by the Sessions Court should be tried with the aid of juries. A system somewhat similar to this has hitherto been in force in Bengal, where the list of offences triable by juries includes the bulk of the cases ordinarily committed to Sessions, namely, all offences under Chapters VIII, XI, XVI, XVII and XVIII of the Penal Code and attempts to commit and abetments of such offences. The results have been unsatisfactory, and the Bengal Government now proposes, with the approval of the Government of India, to withdraw cases under Chapters VIII, XVI (except the offences of kidnapping, abduction and rape) and XVIII from the cognizance of juries, and to entrust to them cases under Chapter XX. The list of jury cases in the Madras Presidency is restricted to offences under sections 379, 380 and 382 (theft); 392—395, 397—402 (robbery and dacoity); 411, 412, 414 (receiving or possessing stolen property); 451—459, 461 (house trespass, burglary, etc.), of the Penal Code. In the North-Western Provinces and Oudh the list includes the following offences: sections 363—369, 372, 373 (kidnapping and abduction);

376 (rape); 379—382 (theft); 392—395, 397, 399, 401 (robbery and dacoity); 403, 404 (criminal misappropriation; 411—414 (possession, etc., of stolen property); 426—432, 434—436, 440 (mischief); 448, 450—462 (house trespass, etc.); 493—498 (offences against marriage), of the Penal Code. In commending these facts to the consideration of the Bombay Government, I am to say that the lists prevailing in Madras and in the North-Western Provinces and Oudh appear to the Government of India to be based on a suitable classification of the offences which should be declared triable by juries in Sessions Courts in India.

9. The difficulty under the second head seems to arise from the interpretation which Sessions Judges and Judges of the various High Courts place or have placed on their duty in making or dealing with references under section 307 of the Criminal Procedure Code. In many instances a strong disinclination has been exhibited by the High Courts to interfere with the verdicts of juries, and as a consequence Sessions Judges are often reluctant to make references under this section. It has been proposed by the Governments of Madras and Bengal that the law should be so amended as to make such references compulsory in every case in which a Sessions Judge disagrees from the verdict of the jury. The Governor General in Council is, however, unwilling to adopt this course. Section 307 in its present form prescribes that the Sessions Judge shall refer such cases when he considers that there has been a substantial failure of justice, and it confers on the High Court the fullest power to deal with such references. It does not seem to the Government of India to be desirable that the Judge should be bound to refer cases in which the failure of justice is not quite clear—such as cases in which he differs from the jury on some minor point, or those in which the evidence is possibly so nearly balanced that even trained Judges might differ in their conclusions on it. His Excellency in Council has not overlooked the fact that there is a strong body of opinion among the Honourable Judges of the Calcutta and Madras High Courts in favour of the proposal in question; but on the whole he would prefer not to make an alteration in the law which might have the effect of encouraging unnecessary references. If the practice of the High Court is based on principles similar to those laid down in 1887 by Prinsep and Pigot, JJ., in the case of Itwari Sahu, * and in 1890 by Collins, C.J., and Handley, J., in the case of Guruvadu † (both cases are referred to in Mr. Justice Candy's minute), no such alteration of the law is required; while on the other hand, if a different and narrower practice is allowed to prevail, the mere fact of a reference under section 307 being obligatory on the Sessions Judge would probably not affect the view which the High Court is likely to take of its duty in dealing with these references.

* I. L. R., 15 Calcutta, 269.

† I. L. R., 13 Madras, 343.

10. It has, however, been suggested by the Bengal Government that in order to facilitate the disposal of references under section 307 of the Code the Sessions Judge should be specifically empowered or required to ascertain and record the reasons of the jury for their verdict. The Governor General in Council admits that the present system is defective in so far as the Judge, although bound by the Code to refer to the High Court cases in which he considers this course to be necessary for the ends of justice, is not in a position to place before the High Court in a proper shape materials for determining whether the verdict is a wrong one or not. His Excellency in Council, however, is averse to requiring or authorising Sessions Judges to question juries as to the reasons for their verdict, except in cases already provided for by section 303 of the Code. In the first place, no room should be allowed for anything approaching to a cross-examination of the jury. Besides, not only would it be difficult for untrained men, such as the jurors would be in most cases, to formulate their reasons in a satisfactory shape, but it is doubtful whether a mere statement of their reasons would help materially towards the disposal of the case. It seems to the Government of India that a statement of the *facts* found by the jury, rather than of the reasons for their finding, is what is desired for the purpose of enabling a satisfactory decision to be arrived at as to the correctness of their verdict. His Excellency in Council would, therefore, adopt the alternative proposal made by the Judges of the Bombay High Court named in the margin and amend the law so as to empower the Sessions Judge, if he thinks fit, whether before or after a general verdict has been given, to take special verdicts from the jurors on particular issues of fact, and perhaps on the general credibility of particular evidence. Such an amendment of section 303 would be sufficient both to place the Sessions Judge in a position to decide whether a reference should or should not be made to the High Court under section 307, and to furnish the High Court with proper materials for determining whether the verdict is one which should be upheld or not. This point has accordingly been noted for further consideration when the Criminal Procedure Code may next come under revision.

Mr. Justice Birdwood.
" " Candy.
" " Telang.

11. Lastly as to the question of allowing an appeal on the facts from the verdict of a jury. The concession of a right of appeal in one form or another is advocated by the Bengal Government, by a strong majority of the Judges of the Calcutta High Court, and by some of the Judges of the Madras High Court; and it has been forcibly contended that mistakes on the part of a jury, like other supposed judicial errors, should be left to be brought before the Appellate Court by the parties concerned instead of by the presiding Judge. Accordingly the Government of India have very anxiously considered whether section 418 of the Code should not be amended by allowing an appeal on the facts either when the jury is not unanimous and the Judge does not approve of the verdict of the majority, or when the opinion of the jury is unanimous but the Judge expresses a positive disapproval. The latter rule would be in accordance with section 307 as it now stands, while the former would do little more than extend to Sessions Courts, *mutatis mutandis*, the rule which prevails in High Courts under section 305.

But after due deliberation, and while attaching full weight to the expressions of opinion above quoted, the Governor General in Council has come to the conclusion that it is not expedient, at all events without some further trial, to permit an appeal to be made against the decision of a jury. It is not clear to His Excellency in Council what advantage there would be in retaining the jury system at all, if it is to be reduced so nearly to the level of a trial with assessors; and he is reluctant to abolish the distinctive features of trial by jury, the comparative finality of the verdict, until all other available methods for the improvement of the system have been exhausted. The Government of India are, moreover, of opinion that no such change in the law will be really necessary if cases which have been shown by experience to be unsuitable for trial before juries are removed from their cognizance, as suggested in paragraphs 7 and 8 above; and if, in addition to this, the safeguard against failures of justice already provided by section 307 of the Criminal Procedure Code is strengthened in the manner proposed in the preceding paragraph.

12. With these remarks I am to commend the subject to the consideration of the Bombay Government and to suggest that such action as His Excellency the Governor in Council may consider necessary should be taken under section 269 of the Criminal Procedure Code. The Government of India will be glad to be informed in due course of the action taken by the Bombay Government in the matter.

From C. J. LYALL, Esq., C.I.E., Secretary to the Government of India, Home Department, to the Chief Secretary to the Government of Bengal,—No. 1107, dated the 25th August 1892. No. 127.

I am directed to reply to Sir John Edgar's letter No. 12-2 J.-D., dated the 22nd June 1891, forwarding, with enclosures, a report on the working of the jury system in Sessions Courts in the Lower Provinces of Bengal. Your confidential letter No. 4675-J., dated the 21st December 1891, is replied to at the same time.

2. It is understood that under existing orders the jury system is in force in Bengal in the districts of Burdwan, 24-Parganas, Hughli, Howrah, Murshidabad, Nadia, Dacca and Patna, and that all offences under the Penal Code which fall within Chapter VIII (offences against public tranquillity), Chapter XI (false evidence and offences against public justice), Chapter XVI (offences against the person), Chapter XVII (offences against property) and Chapter XVIII (false documents and offences against property marks), and also attempts to commit and abetments of these offences (Chapters V and XXIII), are triable by jury before the Court of Sessions.

3. The result of the recent inquiry, so far as Lower Bengal is concerned, is to show that the system of trial by jury, as hitherto carried out, has worked in an eminently unsatisfactory manner. The opinions of District Executive and Judicial officers and of Divisional Commissioners are almost unanimous in its condemnation. In this conclusion the Local Government concurs. On such a question, however, the Governor General in Council has felt bound to attach the greatest importance to the opinions expressed by the Judges of the Calcutta High Court. The Judges have been unable to formulate a reply which would represent their views as a body, and have recorded separate minutes on the subject; but the balance of opinion, as given in their minutes, is distinctly unfavourable in regard to the manner in which the system has worked in Bengal and Assam. The only opinions at all favourable are embodied in a joint minute recorded by the Honourable Justices Norris, Ghosh and Bannerjee, and in a separate minute by Mr. Justice Beverley. The Honourable Justices Amir Ali and O'Kinealy condemn the system. Mr. Justice Tottenham considers that it has worked unsatisfactorily.

and suggests that capital cases should be withdrawn from juries. The Honourable Justices Prinsep, Wilson, Pigot and Macpherson also consider that the system, as at present in force, as worked unsatisfactorily, but that it is capable of improvement if certain substantial changes of law and procedure are made. The Honourable the Chief Justice and Mr. Justice Trevelyan have abstained from giving an opinion on the merits of the question. It is observed that even those Judges who report favourably on the system rely to a great extent on the provisions of section 307 of the Criminal Procedure Code as a safeguard against failures of justice, and that practically all the Judges are inclined to the opinion that some action should be taken in the direction of granting a right of appeal on the facts or of adopting other measures for rendering the verdicts of juries less final than they are at present.

4. The Government of India have also observed that the Committee* recently appointed under the orders of the Lieutenant-Governor to enquire into the question of police administration in the Lower Provinces have unanimously condemned the jury system in the mofussil. In paragraph 209 of their Report are the following remarks:—

* Mr. John Beames, *President*.
" J. F. Stevens.
" J. C. Veasey.
" E. Macnaghten.
Raja Peary Mohun Mookerjee, C.S.I.
Mr. H. H. Risley, C.I.E.
} *Members.*

The conclusion seems inevitable that the jury system is responsible for a not inconsiderable number of failures of justice. We think that some restriction of the system in Bengal is desirable in the interests of public justice, and we would suggest that cases of murder and culpable homicide, in which its failure is notoriously most conspicuous (as also it is most serious in its results), should be excluded from its operation.

5. The Lieutenant-Governor's general conclusions are summed up in paragraph 5 of Sir John Edgar's letter under reply, in which it is stated that "a careful consideration of the opinions and figures now obtained leaves no doubt in Sir Charles Elliott's mind of the failure of the jury system in its present shape. It would scarcely be possible to obtain opinions from a large number of men more nearly approaching to unanimity than is the condemnation of the jury system contained in the reports and minutes above referred to; and it appears to the Lieutenant-Governor that there can be no more convincing proof of its failure than this. His Honour thinks that if the result could have been foreseen no advocate would have been found for the introduction of this Western institution into India." As, however, it has been introduced, Sir Charles Elliott would not abolish it, but he would take steps to make such changes in its working as are essential to secure the due administration of justice.

The proposals of His Honour the Lieutenant-Governor for amending the law with a view to remove the defects which exist in the present system of trial by jury are, briefly stated, as follows:—

(1) that a reference to the High Court should be made compulsory in all cases in which the Sessions Judge thinks that the verdict of a jury is contrary to the weight of the evidence;

(2) that it should be made incumbent upon the Sessions Judge to ascertain and fully record the reasons of the jury for their verdict; and

(3) that a right of appeal should be granted on the facts against the verdict of a jury when the jury is not unanimous, unless the Judge records his agreement with the majority.

The first and third proposals are based on the minutes recorded by Mr. Justice Prinsep and other Honourable Judges of the Calcutta High Court; and the second on the suggestions of experienced Sessions Judges. The result of the changes recommended by the Lieutenant-Governor would be to extend the power of modifying or reversing the verdicts of jurors, and thus to reduce trial by jury more to the level of trial by assessors as regulated by the Code of Criminal Procedure.

6. His Honour further proposes to withdraw from the list of cases triable by juries the whole of Chapter VIII of the Penal Code, offences relating to public tranquility; the whole of Chapter XVI, offences relating to the human body, except those which are now triable by jury in the North-Western Provinces, *viz.*, kidnapping, abduction, and rape; and the whole of Chapter XVIII, offences relating to documents and trade-marks. On the other hand, he would add to the list of offences under Chapter XX relating to marriage. The list of offences which would then be triable by jury would apparently include the following classes of cases. Chapter XI, false evidence and offences against public justice; the offences of kidnapping, abduction, and rape, sections 363—369, 372, 373 and 376 in Chapter XVI (all other offences in this Chapter being omitted); Chapter XVII, offences against property; and Chapter XX, offences against marriage; and also abetments of and attempts to commit any of the above offences (Chapters V and XXIII). It is within the competence of the Local Government to make these changes on its own authority under section 269 of the Criminal Procedure Code,

but His Honour the Lieutenant-Governor has thought it best in the first instance to place his views before the Government of India.

7. I am now to communicate the conclusions at which the Governor General in Council has arrived after careful consideration of the entire question. In the opinion of His Excellency in Council, derived from a review of the reports from other Provinces as well as from Bengal, the defects of the present system of trial by jury appear to be mainly attributable to two causes—

(1) to the extension of the jury system (*a*) to areas to which it is unsuitable, and (*b*) to classes of offences which, as the experience now gained has shown, ought not to be cognizable by juries;

(2) to the fact that the provisions of section 307 of the Criminal Procedure Code which were intended to give Sessions Judges and the High Courts power to remedy and correct wrong verdicts, have failed to fulfil this intention.

8. As regards the first of these causes, section 269 of the Criminal Procedure Code confers on Local Governments and Administrations complete liberty of action in respect of the determination of the areas within which offences shall be tried by juries as well as of the classes of offences which shall be so triable. The Governor General in Council has no desire to interfere with or to limit by legislation or otherwise the discretion entrusted to Local Governments in the matter; but he is constrained to express his concurrence in the Lieutenant-Governor's view that cases of murder and culpable homicide should be withdrawn from the cognizance of juries and he is further inclined to agree in the view that cases of rioting under Chapter VIII of the Penal Code should be withdrawn. His Excellency in Council has no doubt that the action which His Honour proposes to take for the revision of the list of offences triable by jury in Bengal, as described in paragraph 6 above, is fully justified by the results reported.

9. The difficulty under the second head seems to arise from the interpretation which Sessions Judges and Judges of the various High Courts place or have placed on their duty in making or dealing with references under section 307 of the Criminal Procedure Code. In many instances a strong disinclination has been exhibited by the High Courts to interfere with the verdicts of juries, and as a consequence Sessions Judges are often reluctant to make reference under this section. It has been proposed by the Governments of Madras and Bengal that the law should be so amended as to make such references compulsory in every case in which the Sessions Judge disagrees from the verdict of the jury. The Governor General in Council is, however, unwilling to adopt this course. Section 307 in its present form prescribes that the Sessions Judge shall refer such cases when he considers that there has been a substantial failure of justice, and it confers on the High Court the fullest power to deal with such references. It does not seem to the Government of India to be desirable that the Judge should be bound to refer cases in which the failure of justice is not quite clear—such as cases in which he differs from the jury on some minor point, of those in which the evidence is possibly so nearly balanced that even trained Judges might differ in their conclusions on it. His Excellency in Council has not overlooked the fact that there is a strong body of opinion among the Honourable Judges of the Calcutta and Madras High Courts in favour of the proposal in question, but on the whole he would prefer not to make an alteration in the law which might have the effect of encouraging unnecessary references. If the practice of the High Court is based on the principles laid down in 1887 by Prinsep and Pigot, JJ., in the case of Itwari Sahu,* no such alteration of the law is required; while, on the other hand, if a different and narrower practice is allowed to prevail, the mere fact of a reference under section 307 being obligatory on the Sessions Judge would probably not affect the view which the High Court is likely to take of its duty in dealing with these references.

* I. L. R., 15 Calcutta, 269.

10. It has, however, been suggested by the Bengal Government that in order to facilitate the disposal of references under section 307 of the Code, the Sessions Judge should be specifically empowered or required to ascertain and record the reasons of the jury for their verdict. The Governor General in Council admits that the present system is defective in so far as the Judge, although bound by the Code to refer to the High Court cases in which he considers this course to be necessary for the ends of justice, is not in a position to place before the High Court in a proper shape materials for determining whether the verdict is a wrong one or not. His Excellency in Council, however, is averse to requiring or authorizing Sessions Judges to question juries as to the reasons for their verdict except in cases already provided for by section 303 of the Code. In the first place no room should be allowed for anything approaching to a cross-examination of the jury. Besides, not only would it be difficult for untrained men, such as the jurors would be in most cases, to formulate their reasons in a

satisfactory shape, but it is doubtful whether a mere statement of their reasons would help materially towards the disposal of the case. It seems to the Government of India that a statement of the *facts* found by the jury, rather than of the reasons for their finding, is what is desired for the purpose of enabling a satisfactory decision to be arrived at as to the correctness of their verdict. His Excellency in Council would, therefore, adopt the alternative proposal made by the Judges of the Bombay High Court* and amend the law so as to empower the Sessions Judge, if he thinks fit, whether before or after a general verdict has been taken, to require special verdicts from the jurors on particular issues of fact, and perhaps on the general credibility of particular evidence. Such an amendment of section 303 would be sufficient both to place the Sessions Judge in a position to decide whether a reference should or should not be made to the High Court under section 307, and to furnish the High Court with proper materials for determining whether the verdict is one which should be upheld or not. This point has accordingly been noted for further consideration when the Criminal Procedure Code may next come under revision.

* Mr. Justice Birdwood.
" " Telang.
" " Candy.

11. Lastly as to the question of allowing an appeal on the facts from the verdict of a jury. The concession of a right of appeal in one form or another is advocated by the Bengal Government, by a strong majority of the Judges of the Calcutta High Court, and by some of the Judges of the Madras High Court ; and it has been forcibly contended that mistakes on the part of a jury, like other supposed judicial errors, should be left to be brought before the Appellate Court by the parties concerned instead of by the presiding Judge. Accordingly, the Government of India have very anxiously considered whether section 418 of the Code should not be amended by allowing an appeal on the facts either when the jury is not unanimous and the Judge does not approve of the verdict of the majority, or when the opinion of the jury is unanimous but the Judge expresses a positive disapproval. The latter rule would be in accordance with section 307 as it now stands, while the former would do little more than extend to Sessions Courts, *mutatis mutandis*, the rule which prevails in High Courts under section 305.

But after due deliberation, and while attaching full weight to the expressions of opinion above quoted, the Governor General in Council has come to the conclusion that it is not expedient, at all events without some further trial, to permit an appeal to be made against the decision of a jury. It is not clear to His Excellency in Council what advantage there would be in retaining the jury system at all, if it is to be reduced so nearly to the level of a trial with assessors; and he is reluctant to abolish the distinctive feature of trial by jury, the comparative finality of the verdict, until all other available methods for the improvement of the system have been exhausted. The Government of India are, moreover, of opinion that no such change in the law as that involved in the proposal under consideration will be really necessary if cases which have been shown by experience to be unsuitable for trial before juries are removed from their cognizance, and if, in addition to this, the safeguard against failures of justice already provided by section 307 of the Criminal Procedure Code is strengthened in the manner proposed in the preceding paragraph.

12. With these remarks I am to commend the subject to the consideration of the Bengal Government, and to suggest that such action as the Lieutenant-Governor may consider necessary should be taken under section 269 of the Criminal Procedure Code. The Government of India will be glad to be informed in due course of the action taken by His Honour in the matter.

From C. F. LYALL, Esq., C.I.E., Secretary to the Government of India, Home Department, to the Secretary to the Government of the North-Western Provinces and Oudh, Judicial Department,—No. 1108, dated the 25th August 1892. No. 128.

I am directed to reply to your letters marginally noted, relative to the working of the jury system in Sessions Courts in the North-Western Provinces and Oudh.

No. 307, dated the 2nd February 1891.
No. 3007, dated the 5th November 1891.

2. It is understood that under existing orders that jury system is in force in the districts of Allahabad, Benares and Lucknow, and that all offences falling within sections 363 to 369, 372 and 373 (kidnapping and abduction); 376 (rape); 379 to 382 (theft); 392 to 395, 397 to 399 and 401 (robbery and dacoity); 403 and 404 (criminal misappropriation); 411 to 414 (receiving or possessing stolen property), 426 to 432, 434 to 436 and 440 (mischief), 448 and 450 to 462 (house trespass, burglary, etc.), and 493 to 498 (offences relating to marriage) of

the Penal Code, and also abetments of and attempts to commit any such offences are triable by jury before the Court of Sessions.

3. The result of the recent inquiry, so far as the North-Western Provinces and Oudh are concerned, is to show that the system, as at present carried out, has worked on the whole in a fairly satisfactory manner. There is, as might have been expected on such a matter, a wide divergence of opinion among the officers consulted as to the working and merits of the system, but the conclusion arrived at by His Honour the Lieutenant-Governor and Chief Commissioner is that it has worked fairly well. On the other hand, the Honourable the Chief Justice of the Allahabad High Court has recorded his opinion that trial by jury is not situated to the North-Western Provinces and should be abolished.

4. The Government of the North-Western Provinces and Oudh has made no proposals or amending the Criminal Procedure Code with a view to the improvement of the present system of trial by jury; but it will be convenient to state here, for the information of His Honour the Lieutenant-Governor and Chief Commissioner, the following proposals which have been made by other Local Governments, namely :—

(1) that a reference to the High Court should be made compulsory in all cases in which the Sessions Judge thinks that the verdict of a jury is contrary to the weight of the evidence;

(2) that it should be made incumbent upon the Sessions Judge to ascertain and fully record the reasons of the jury for their verdict; and

(3) that a right of appeal should be granted on the facts against the verdict of a jury, when the jury is not unanimous, unless the Judge records his agreement with the majority.

5. I am nowto communicate the conclusions at which the Governor General in Council has arrived after careful consideration of the entire question. In the opinion of His Excellency in Council, derived from a review of the reports from other Provinces as well as from the North-Western Provinces and Oudh, the defects which have been brought to notice in certain Provinces in the existing system of trial by jury appear to be mainly attributable to two causes—

(1) to the extension of the jury system (*a*) to areas to which it is unsuitable, and (*b*) to classes of offences which, as the experience now gained has shown, ought not to be cognizable by juries;

(2) to the fact that the provisions of section 307 of the Criminal Procedure Code, which were intended to give Sessions Judges and the High Courts power to remedy and correct wrong verdicts, have failed to fulfil this intention.

6. As regards the first of these causes, section 269 of the Criminal Procedure Code confers on Local Governments and Administrations complete liberty of action in respect of the determination of the areas within which offences shall be tried by juries as well as of the classes of offences which shall be so triable. The Governor General in Council has no desire to interfere with or to limit by legislation or otherwise the discretion entrusted to Local Governments in the matter; but he is constrained to express his concurrence in the opinion stated in some of the reports forwarded with your letter of the 2nd February 1891, as well as in reports received from other Provinces, that cases of murder and culpable homicide should be excluded from the cognizance of juries, and he is further inclined to agree in the view that cases of rioting under Chapter VIII of the Penal Code should be excluded. These offences, however, are not now triable by jury in the North-Western Provinces and Oudh; and it is to the careful selection of the offences which have been declared to be so triable in those Provinces and to the cautious manner in which the system has been introduced that the Governor General in Council attributes the fact that it has worked with comparative success. There appears to be no reason to suppose that the jury system has been extended to unsuitable areas in the united Provinces. The Government of India agree, however, with the Local Government that, for the reasons given in your letter of the 5th November 1891, the extension of the system to Agra and Cawnpore is not advisable at present.

7. The difficulty under the second head seems to arise from the interpretation which Sessions Judges and Judges of the various High Courts place or have placed on their duty in making or dealing with references under section 307 of the Criminal Procedure Code. In many instances a strong disinclination has been exhibited by the High Courts to interfere with the verdicts of juries, and as a consequence Sessions Judges are often reluctant to make references under this section. It has been proposed by the Governments of Madras and Bengal that the law should be so amended as to make such references compulsory in every case in which a Sessions Judge disagrees from the verdict of the jury. The Governor General in Council is,

however, unwilling to adopt this course. Section 307 in its present form prescribes that the Sessions Judge shall refer such cases when he considers that there has been a substantial failure of justice, and it confers on the High Court the fullest power to deal with such references. It does not seem to the Government of India to be desirable that the Judge should be bound to refer cases in which the failure of justice is not quite clear—such as cases in which he differs from the jury on some minor point, or those in which the evidence is possibly so nearly balanced that even trained Judges might differ in their conclusions on it. His Excellency in Council has not overlooked the fact that there is a strong body of opinion among the Honourable Judges of the Calcutta and Madras High Courts in favour of the proposal in question; but on the whole he would prefer not to make an alteration in the law which might have the effect of encouraging unnecessary references. If the practice of the High Court is based on principles similar to those laid down in 1887 by Prinsep and Pigot, JJ., in the case of Itwari Sahu,* no such alteration of the law is required; while, on the other hand, if a different and narrower practice is allowed to prevail, the mere fact of a reference under section 307 being obligatory on the Sessions Judge would probably not affect the view which the High Court is likely to take of its duty in dealing with these references.

* I. L. R., 15 Calcutta, 269.

8. It has, however, been suggested by the Bengal Government that, in order to facilitate the disposal of references under section 307 of the Code, the Sessions Judge should be specifically empowered or required to ascertain and record the reasons of the jury for their verdict. The Governor General in Council admits that the present system is defective, in so far as the Judge, although bound by the Code to refer to the High Court cases in which he considers this course to be necessary for the ends of justice, is not in a position to place before the High Court in a proper shape materials for determining whether the verdict is a wrong one or not. His Excellency in Council, however, is averse to requiring or authorizing Sessions Judges to question juries as to the reasons for their verdict except in cases already provided for by section 303 of the Code. In the first place, no room should be allowed for anything approaching to a cross-examination of the jury. Besides, not only would it be difficult for untrained men, such as the jurors would be in most cases, to formulate their reasons in a satisfactory shape, but it is doubtful whether a mere statement of their reasons would help materially towards the disposal of the case. It seems to the Government of India that a statement of the *facts* found by the jury, rather than of the reasons for their finding, is what is desired for the purpose of enabling a satisfactory decision to be arrived at as to the correctness of their verdict. His Excellency in Council would, therefore, adopt the alternative proposal made by the Judges of the Bombay High Court named in the margin and amend the law so as to empower the Sessions Judge, if he thinks fit, whether before or after a general verdict has been taken, to require special verdicts from the jurors on particular issues of fact, and perhaps on the general credibility of particular evidence. Such an amendment of section 303 would be sufficient both to place the Sessions Judge in a position to decide whether a reference should or should not be made to the High Court under section 307, and to furnish the High Court with proper materials for determining whether the verdict is one which should be upheld or not. This point has accordingly been noted for further consideration when the Criminal Procedure Code may next come under revision.

Mr. Justice Birdwood.
" " Telang.
" " Candy.

9. Lastly, as to the question of allowing an appeal on the facts from the verdict of a jury. The concession of a right of appeal in one form or another is advocated by the Bengal Government, by a strong majority of the Judges of the Calcutta High Court, and by some of the Judges of the Madras High Court; and it has been forcibly contended that mistakes on the part of a jury, like other supposed judicial errors, should be left to be brought before the Appellate Court by the parties concerned instead of by the presiding Judge. Accordingly, the Government of India have very anxiously considered whether section 418 of the Code should not be amended by allowing an appeal on the facts either when the jury is not unanimous and the Judge does not approve of the verdict of the majority, or when the opinion of the jury is unanimous but the Judge expresses a positive disapproval. The latter rule would be in accordance with section 307 as it now stands, while the former would do little more than extend to Sessions Courts, *mutatis mutandis*, the rule which prevails in High Courts under section 305.

But after due deliberation, and while attaching full weight to the expressions of opinion above quoted, the Governor General in Council has come to the conclusion that it is not expedient, at all events without some further trial, to permit an appeal to be made against the decision of a jury. It is not clear to His Excellency in Council what advantage there would be in retaining the jury system at all if it is to be reduced so nearly to the level of a trial with assessors; and he is reluctant to abolish the distinctive feature of trial by jury, the comparative

finality of the verdict until all other available methods for the improvement of the system have been exhausted. The Government of India are, moreover, of opinion that no such change in the law will be necessary in the North-Western Provinces and Oudh, where capital offences and other cases unsuitable for trial by juries are already excluded from their cognizance, and that the ends of justice will be adequately secured if the safeguard against failures of justice provided by section 307 of the Criminal Procedure Code is strengthened in the manner proposed in the preceding paragraph.

No. 129. From C. J. LYALL, Esq., C.I.E., Secretary to the Government of India, Home Department, to the Chief Commissioner of Assam,—No. 1109, dated the 25th August 1892.

1. Letter from the Calcutta High Court, No. 540, dated 9th February 1891, and enclosures.
2. Letter from the Bengal Government, No. 122-J-D., dated the 22nd June 1891, and enclosures.
3. Letter from the Bengal Government, No. 4675-J. (Confidential), dated the 21st December 1891.
4. Letter to the Bengal Government, No. , dated August 1892.

With reference to your predecessor's letter No. 145—J., dated 14th January 1891, relative to the working of the system of trial by jury before the Court of Sessions in Assam, I am directed to forward, for your consideration, a copy of the correspondence noted in the margin.

2. It is understood that under existing orders the jury system is in force in Assam in the Goalpara, Kamrup, Darrang, Nowgong, Sibsagar and Lakhimpur Districts of the Assam Valley Division, and that all cases committed for trial to the Sessions Court are triable by jury. Owing to the fact that District Magistrates are invested with special powers under sections 30 and 34 of the Criminal Procedure Code in these districts, it is probable that the large majority of the cases committed to the Sessions and actually tried with the aid of juries are either cases of murder or culpable homicide, or cases of other offences in respect of which a sentence of more than seven years' rigorous imprisonment is called for.

3. I am to invite a reference to paragraphs 6—8 of the letter from the Government of India to the Bengal Government (enclosure No. 4), and to say that the Governor General in Council will be glad if you will consider, with reference to the correspondence now forwarded, whether any changes are called for in the working of the jury system, and especially whether cases in which accused persons are charged with murder or culpable homicide or with rioting should not be removed from the cognizance of juries in the Assam Valley Districts. You will observe that the Bengal Government has arrived at the conclusion that the results of trials by jury have been especially unsatisfactory in these classes of cases; and that the views of the Lieutenant-Governor of Bengal in regard to the working of the jury system are generally concurred in by the majority of the Honourable Judges of the Calcutta High Court, who were asked to favour the Government of India with an expression of their opinion as to the working of the system in Assam as well as in Bengal.

4. The Governor General in Council is aware that the late Chief Commissioner was of opinion that no change was needed with regard to the jury system so far as Assam was concerned. The question of withdrawing the particular classes of cases mentioned above does not however, appear to have been specially considered by him. The only other Provinces in which, cases of murder and culpable homicide are at present triable by juries are Bengal and Bombay. In Bengal the Lieutenant-Governor, as you will observe from the enclosures, proposes to exclude all offences under Chapters VIII and XVI of the Penal Code, except kidnapping, abduction and rape, from the list of offences triable by jury; and the results reported from the Bombay Presidency have determined the Governor General in Council to address the Bombay Government with a view to the withdrawal at any rate of capital cases from the cognizance of juries. His Excellency in Council sees no reason to suppose that juries in Assam are more capable of trying such cases than juries in other Provinces. In paragraph 15 of his letter No. 1271, dated the 17th November 1890, forwarded with your predecessor's letter under reply, the Judge of the Assam Valley Districts expresses the opinion that the difficulty of explaining sections 299—304, and 319—322 of the Penal Code to juries in Assam forms an insuperable obstacle to the jury system; and some of the cases dealt with in the notes and correspondence appended to his letter would seem to point to the conclusion that in Assam, as elsewhere, perverse verdicts have been given, and failures of justice have not unfrequently taken place, in trials for rioting and murder. Certain passages in the Judge's letter have indeed led the Government of India to doubt whether the introduction of the jury system into the Assam Valley Districts was not altogether premature. As, however, it is actually in force at present they do not desire that it should be abandoned, but they will be glad if you will consider whether the list of offences triable by jury should not be revised, under the powers

vested in the Local Administration by section 269 of the Criminal Procedure Code, so as to eliminate those offences which experience has shown to be unsuitable for trial by juries in India.

5. In paragraph 6 of the enclosed letter to the Government of Bengal will be found a revised list of the offences to be declared triable by juries in Bengal, which His Honour the Lieutenant-Governor proposes to substitute for the existing list; and to assist you in the disposal of this matter, I am desired to state here the offences which have been declared triable by juries at Sessions Courts in the Madras Presidency and in the North-Western Provinces and Oudh. In Madras these offences are: sections 379, 380 and 382 (theft); 392—395, 397—402 (robbery and dacoity); 411, 412, 414 (receiving or possessing stolen property); 451—459, 461 (house-trespass with intent to commit theft, etc.), of the Penal Code. In the North-Western Provinces and Oudh the list includes offences under sections 363—369, 372, 373 (kidnapping and abduction); 376 (rape); 279—382 (theft); 392—395, 397—399, 401 (robbery and dacoity); 403, 404 (criminal misappropriation); 411—414 (receiving or possessing stolen property); 426—432, 434—436, 440 (mischief); 448, 450—462 (house-trespass, etc.); 493—498 (offences against marriage), of the Penal Code. The system as carried out in the North-Western Provinces and Oudh seems to the Government of India to be based on a suitable classification of the offences which may properly be declared triable by juries in Sessions Courts. The Government of India propose also to commend this classification to the consideration of the Bombay Government. In Provinces other than those named above, the jury system is not in force.

6. The Government of India will be glad to be informed in due course of the action which you may, on further consideration of the matter, decide to take under section 269 of the Criminal Procedure Code.

Office memo. from C. J. Lyall, Esq., C.I.E., Secretary to the Government of India, Home Department, to the Secretary to the Government of India, Legislative Department,—No. 1110, dated the 25th August 1892. **No. 130.**

The undersigned is directed to forward copies of the papers entered in the enclosed list, and to request that, when the Code of Criminal Procedure next comes under revision, section 303 of that Code may be amended on the lines of the following draft:—

Section 303.—Unless otherwise ordered by the Court, the jury shall return a separate verdict of conviction or acquittal on each of the charges on which the accused is tried, and the Judge may in each case ask them such questions as are necessary to ascertain what their verdict is.

"*The Judge may, instead of directing the jury to return a general verdict of conviction or acquittal, require them to return specific findings on particular issues of fact, and he shall then determine on the findings so returned whether the verdict is to be recorded as one of conviction or acquittal on each of the chargeson which the accused is tried respectively.*

"*If after a general verdict of conviction or acquittal has been returned, the Judge is in doubt whether the verdict is one of which he should express approval or disapproval, he may require the jury to return specific findings on any particular issues of fact in respect of which he desires to ascertain their opinion.*

"*All questions asked by the Judge and all answers given by the jury under this section shall be recorded.*"

The exact wording to be adopted may be left for consideration hereafter by Select Committee, the principle to be observed being that the Judge may ask for a special verdict either before the jury come to their decision, or after a general verdict has been returned.

From H. J. S. Cotton, Esq., C.S.I., Chief Secretary to the Government of Bengal, to the Secretary to the Government of India, Home Department,—No. 4056—J., dated the 10th November 1892. **No. 131.**

With reference to the telegram dated the 8th November 1892, from Home Department, I am directed to state, for the information of the Government of India, that the correspondence on the subject of the working of the jury system in Bengal has this day been published by this Government.

2. I am at the same time, with reference to the last paragraph of your letter No. 1807, dated the 25th August 1892, to forward, for the information of His Excellency the Governor General in Council, a copy of the Notification of this Government, dated the 20th October 1892, effecting certain changes in connection with trial by jury in Bengal, and of a Circular No. 917—J.—D., dated the 24th October 1892, on the subject of the selection of jurors, which has been issued to the Sessions Judges and to the Collectors of the districts to which the system of trial by jury has been extended.

No. 132. Notification by H. J. S. COTTON, Esq., Chief Secretary to the Government of Bengal, Judicial Department, dated the 20th October 1892.

It is hereby notified for general information that in the exercise of the powers conferred on him by section 269 of the Code of Criminal Procedure, the Lieutenant-Governor is pleased to modify the orders contained in the notifications dated the 7th January, the 27th May and the 13th October 1862, published in the *Calcutta Gazettes* of the 8th January, the 28th May and the 15th October 1862, respectively, under which offencs defined in following chapters of the Indian Penal Code, *viz.*:—

Chapter VIII (offences against the public tranquillity),
Ditto XI (false evidence and offences against public justice),
Ditto XVI (offences affecting the human body),
Ditto XVII (offences against property), and
Ditto XVIII offences relating to documents and to trade or property marks),

and abetments of, and attempts to commit, such offences, are declared to be triable by jury in any Court of Sessions established in the districts of the 24-Parganas, Hooghly, Burdwan, Murshidabad, Nadia, Patna and Dacca; and hereby revokes so much of the aforesaid orders as apply to offences defined in the following chapters of the Indian Penal Code, *viz.*:—

Chapter VIII (offences against the public tranquillity),
Ditto XVI (offences affecting the human body),

with the exception of sections 363 to 369 (kidnapping and abduction), 372 (selling a minor for purposes of prostitution, etc.), 373 (buying a minor for purposes of prostitution, etc.), and 376 (rape), and Chapter XVIII (offences relating to documents and to trade or property marks).

These orders shall take effect from and after the 1st November 1892.

The Lieutenant-Governor is further pleased, in exercise of the powers conferred on him under section 269 of the Code of Criminal Procedure, to direct that, from and after 1st November 1892, all offences defined in Chapter XX of the Indian Penal Code (offences relating to marriage), and abetments of, and attempts to commit, such offences, shall be triable by jury in any Court of Sessions established in the districts named above.

No 133. From H. J. S. COTTON, Esq., C.S.I., Chief Secretary to the Government of Bengal, to the Sessions Judges of the 24-Parganas, Hooghly, Burdwan, Murshidabad, Nadia, Patna and Dacca,—No. 907 J.—D., dated the 24th October 1892.

In continuation of my memorandum No. 907 J.—D., dated 20th October 1892, forwarding, for your information, a copy of a notification of the same date, which has been issued by the Lieutenant-Governor, effecting certain alterations in the classes of cases triable by a jury in those districts of Bengal to which the jury system has been extended, I am directed to invite your attention to the necessity for a careful revision of the jury list of your district.

2. In the course of correspondence on the subject of the working of the jury system many representations have been made to Government by Sessions Judges and other officers concerning the *personnel* of jurors, and suggestions have been made that some standard of qualification as to property, education, and respectability should be laid down by law. It was explained in this Government Circular No. 9—J., dated 13th April 1886, that under the existing law all qualified male persons, European and Native, between the ages of 21 and 60, in a jury district, not being exempted under section 320 of the Criminal Procedure Code, are liable to serve as jurors. This does not, however, interfere with the discretion of the Judges and Collectors sitting together, to select "qualified" persons for the service under section 321 of the Code. It was laid down by this Government, in the Circular on the subject issued as long ago as the 13th June 1865, that the duty of selecting jurors should not be delegated to any incompetent or irresponsible subordinate, and that every endeavour should be made to bring into the list only respectable and intelligent men of all classes. It was added that it was the dtuy of those responsible for the preparation of the lists to represent and practically to treat the duty of a juror as one of great responsibility and trust, and to make jurors feel that their co-operation in the administration of justice is sought for as a means of conferring a benefit on their countrymen, and not merely to assist the Judges in their labours. These observations the Lieutenant-Governor desires to repeat and emphasise, and he is convinced that if the power of selection is judiciously exercised, the number of persons found to possess suitable qualifications will still be sufficient for the requirements to any Sessions district.

3. I am to request that each of the Sessions Judges to whom this circular is addressed will arrange a day which shall be mutually convenient to himself and to the Collector of the district, in the latter part of December of each year, and that the two officers sitting together will draw up a list of qualified persons to serve on the jury during the next calendar year, care being taken to place on the list only persons of such character and intelligence as are likely to give material assistance in carrying out the ends of justice.

4. In conclusion, I am to say that, in His Honour's opinion, no person should ordinarily be selected to serve on a jury whose age is less than 25 years.

From H. J. S. COTTON, Esq., C.S.I., Chief Secretary to the Government of Bengal, to the Secretary to the Government of India, Home Department, No. 4047-J., dated the 11th November 1892. No. 134.

In continuation of my telegram of to-day's date, I am directed to forward herewith a table showing separately for the eight districts of Bengal to which the jury system has been extended for the years 1890 and 1891 (1) the number of cases tried at Sessions by a jury under Chapters of the Indian Penal Code in regard to which trial by jury has been withdrawn by the Notification of this Government, dated 20th October 1892, published in the *Calcutta Gazette* of 26th idem, (2) the number of cases tried at Sessions by jury under Chapters of the Code in regard to which that Notification did not apply and in regard to which trial by jury still continues, and (3) the number of cases tried by Judges and Assessors under Chapter XX of the Code, of which trial by jury has now been extended.

2. The figures in the table have been collected from Sessions calendars.

1890. No. 135.

	NAMES OF DISTRICTS.	Number of cases tried at Sessions by jury under Chapters of the Code in which trial by jury has been withdrawn.	Number of cases tried at Sessions by jury under Chapters of the Code in which trial by jury still continues.	Number of cases tried by Judges and Assessors under Chapter XX of the Code to which trial by jury has now been extended.
1	24-Parganas	28	47	2
2	Hooghly	21	20	...
3	Howrah	7	13	2
4	Burdwan	17	5	...
5	Murshidabad	11	10	...
6	Nadia	19	21	...
7	Patna	21	37	1
8	Dacca	18	21	1
	TOTAL	142	174	6
	1891.			
1	24-Parganas	34	40	3
2	Hooghly	14	16	1
3	Howrah	10	16	...
4	Burdwan	10	20	...
5	Murshidabad	8	16	...
6	Nadia	13	25	...
7	Patna	17	22	1
8	Dacca	34	13	1
	TOTAL	140	168	6

No. 136. From H. J. S. Cotton, Esq., C.S.I., Chief Secretary to the Government of Bengal, to the Secretary to the Government of India, Home Department,—No. 4527-J., dated the 12th December 1892.

In continuation of the previous correspondence ending with my letter No. 4416-J., dated 6th December 1892, regarding trial by jury in Bengal, I am directed to submit, for the information of the Government of India, four statements illustrating the number and proportion of cases in which Judges have differed from the verdicts of jury, in the seven districts to which the jury system has been extended in Bengal, during the past five years from 1887 to 1891, inclusive.

2. The first of these statements shows (*a*) the number of cases tried by Courts of Sessions with the aid of a jury, (*b*) the number and percentage of cases in which the Judge differed from the verdict of the jury, (*c*) the number and percentage of cases in which the Judge referred the verdict to the High Court under section 307 of the Criminal Procedure Code, and (*d*) the number and percentage of cases in which the High Court reversed or modified the finding of the jury. The figures are separately given (I) in regard to offences which have been withdrawn from trial by jury by the recent Notification of the Bengal Government, and (II) in regard to offences which are still triable by jury.

3. Statement No. II furnishes similar information, but gives separate figures for cases of murder and for other offences which have been withdrawn from trial by jury.

4. Statements Nos. III and IV furnish subsidiary information in respect of the number and percentage of cases in which the Sessions Judges differed from a verdict of acquittal and from a verdict of conviction.

5. It appears to the Lieutenant-Governor that these statements are instructive as showing the large proportion of cases, especially murder cases, among those which have been withdrawn from trial by jury in which the verdicts of a jury have been set aside by the High Court in comparison with those which still remain triable by a jury.

I.

Statement showing the number of cases tried by Courts of Sessions in the Districts of the 24-Parganas, Hooghly, Howrah, Burdwan, Murshidabad, Nadia, Patna and Dacca during the years 1887 to 1891, the number and percentage of cases in which the Judge differed from the verdict of the Jury, the number and percentage of cases in which the Judge referred the verdict to the High Court under Section 307 of the Criminal Procedure Code, and the number and percentage of cases in which the High Court reversed or modified the finding of the Jury, the figures being separately given in regard to offences which have been withdrawn from trial by Jury and in regard to offences which are still triable by Jury.

Year.	Cases under Chapter VIII, Chapter XVI, with the exception of Sections 363 to 369, 372, 373 and 376, and Chapter XVIII of the Indian Penal Code, which have now been withdrawn from trial by Jury.							Cases under Chapter XI, Sections 363 to 369, 372, 373, and 376 of Chapter XVI and Chapter XVII of the Indian Penal Code, which are still triable by Jury.						
	Total number of cases brought to trial.	Number and percentage of cases in which the Judge differed from the verdict of the Jury.		Number and percentage of cases in which the Judge referred the verdict to the High Court under Section 307 of the Criminal Procedure Code.		Number and percentage of cases in which the High Court reversed or modified the finding of the Jury.		Total number of cases brought to trial.	Number and percentage of cases in which the Judge differed from the verdict of the Jury.		Number and percentage of cases in which the Judge referred the verdict to the High Court under Section 307 of the Criminal Procedure Code.		Number and percentage of cases in which the High Court reversed or modified the finding of the Jury.	
		Number.	Percentage.	Number.	Percentage.	Number.	Percentage.		Number.	Percentage.	Number.	Percentage.	Number.	Percentage.
1887	164	24	14·6	12	7·3	6	3·6	151	15	9·9	7	4·6	2	1·3
1888	149	20	13·4	15	10·06	8	5·3	180	14	7·7	9	5	4	2·2
1889	123	17	13·8	10	8·1	4	3·2	155	11	7·09	3	1·9	1	·6
1890	135	22	16·2	13	9·6	8	5·9	151	9	5·9	5	3·3	4	2.6
1891	127	14	11·02	12	9·4	8	6·3	154	12	7·7	9	5·8	2	1.2
TOTAL .	698	97	13·8	62	8·8	34	4·8	791	61	7·7	33	4·1	13	1·6

II.

Statement showing the number of cases tried by Courts of Session in the districts of the 24-Parganas, Hooghly, Howrah, Burdwan, Murshidabad, Nadia, Patna and Dacca during the years 1887 to 1891, thenumber and percentage of cases in which the Judge differed from the verdict of the Jury, the number and percentage of cases in which the Judge referred the verdict to the High Court under Section 307 of the Criminal Procedure Code, and the number and percentage of cases in which the High Court reversed or modified the finding of the Jury, the figures being separately given in regard to murder cases, other cases which have been withdrawn from trial by Jury and cases which are still triable by Jury.

Year.	Cases under Section 302 (Murder), Indian Penal Code, which have now been withdrawn from trial by Jury.							Cases under Chapter VIII, Chapter XVI with the exception of Sections 302, 363 to 369 and 376 and Chapter XVIII of the Indian Penal Code which have now been withdrawn from trial by Jury.							Cases under Chapter XI, Section 363 to 369, 372, 373 and 376 of Chapter XVI, and Chapter XVII of the Indian Penal Code which are still triable by Jury.						
	Total number of cases brought to trial.	Number and percentage of cases in which the Judge differed from the verdict of the Jury.		Number and percentage of cases in which the Judge referred the verdict to the High Court under Section 307 of the Criminal Procedure Code.		Number and percentage of cases in which the Judge reversed or modified the finding of the Jury.		Total number of cases brought to trial.	Number and percentage of cases in which the Judge differed from the verdict of the Jury.		Number and percentage of cases in which the Judge referred the verdict to the High Court under Section 307 of the Criminal Procedure Code.		Number and percentage of cases in which the High Court reversed or modified the finding of the Jury.		Total number of cases brought to trial.	Number and percentage of cases in which the Judge differed from the verdict of the Jury.		Number and percentage of cases in which the Judge referred the verdict to the High Court under Section 307 of the Criminal Procedure Code.		Number and percentage of cases in which the High Court reversed or modified the finding of the Jury.	
		Number.	Percentage.	Number.	Percentage.	Number.	Percentage.		Number.	Percentage.	Number.	Percentage.	Number.	Percentage.		Number	Percentage.	Number.	Percentage.	Number.	Percentage.
1887 .	58	6	10·3	3	3·1	1	1·7	106	18	16·9	9	8·4	5	4·7	151	15	9·9	7	4·6	2	1·3
1888 .	31	6	19·0	5	16·1	3	9·6	118	14	11·8	10	8·4	5	4·2	180	14	7·7	9	5	4	2·9
1889 .	35	6	17·1	6	17·1	2	5·7	88	11	12·5	4	4·5	2	2·2	155	11	7·09	3	1·9	1	·6
1890 .	42	7	16·6	6	14·2	5	11·9	93	15	16·1	7	7·5	3	3·2	151	9	5·9	5	3·3	4	2·6
1891 .	37	2	5·4	2	5·4	2	5·4	90	12	13·3	10	11·1	6	6·6	154	12	7·7	9	5 8	2	1 2
TOTAL	203	27	13·3	22	10 8	13	6·4	495	70	14·1	40	8·08	21	4·2	791	61	7·7	33	4·1	13	1·6

Statement showing the number of cases tried by Courts of Session in the districts of the 24-Parganas, Hooghly, Howrah, Burdwan, Murshidabad, Nadia, Patna and Dacca during the years 1887 to 1891, in which the Judges differed from the verdict of acquittal and from the verdict of conviction of the Jury, showing separately cases which have been withdrawn from trial by Jury and cases which are still triable by Jury.

Year.	Cases under Chapter VIII, Chapter XVI, with the exception of Sections 363 to 369, 372, 373 and 376, and Chapter XVIII of the Indian Penal Code, which have now been withdrawn from trial by Jury.							Cases under Chapter XI, Sections 363 to 369, 372, 373 and 376 of Chapter XVI and Chapter XVII of the Indian Penal Code, which are still triable by Jury.						
	Total number of cases brought to trial.	Total number and percentage of cases in which the Judge differed from the verdict of the Jury.		Number and percentage of cases in which the Judge differed from the verdict of acquittal.		Number and percentage of cases in which the Judge differed from the verdict of conviction.		Total number of cases brought to trial.	Total number and percentage of cases in which the Judge differed from the verdict of the Jury.		Number and percentage of cases in which the Judge differed from the verdict of acquittal.		Number and percentage of cases in which the Judge differed from the verdict of conviction.	
		Number.	Percentage.	Number.	Percentage.	Number.	Percentage.		Number.	Percentage.	Number.	Percentage.	Number.	Percentage.
1887	164	24	14·6	21	12·8	3	1·8	151	15	9·9	15	9·9	...	...
1888	149	20	13·4	19	12·7	1	·6	180	14	7·7	13	7·2	1	·5
1889	123	17	13·8	15	12·1	2	1·6	155	11	7·09	11	7·09	...	...
1890	135	22	16·2	18	13·3	4	2·9	151	9	5·9	9	5·9	...	...
1891	127	14	11·02	11	8·6	3	2·3	154	12	7·7	11	7·1	1	·6
Total .	698	97	13·8	84	12·03	13	1·8	791	61	7·7	59	7·4	2	·25

IV.

Statement showing the number of cases tried by Courts of Sessions in the districts of the 24-Parganas, Hooghly, Howrah, Burdwan, Murshidabad, Nadia, Patna and Dacca during the years 1887 to 1891, in which the Judges differed from the verdict of acquittal and from the verdict of conviction of the Jury, showing separately murder cases, other cases which have been withdrawn from trial by Jury and cases which are still triable by Jury.

Year.	Cases under Section 302 (Murder), Indian Penal Code, which have now been withdrawn from trial by Jury.							Cases under Chapter VIII, Chapter XVI, with the exception of Sections 302, 363 to 369, 372, 373 and 376, and Chapter XVIII of the Indian Penal Code, which have now been withdrawn from trial by Jury.							Cases under Chapter XI, Sections 363 to 369, 372, 373 and 376 of Chapter XVI, and Chapter XVII of the Indian Penal Code which are still triable by Jury.						
	Total number of cases brought to trial.	Total number and percentage of cases in which the Judge differed from the verdict of the Jury.		Number and percentage of cases in which the Judge differed from the verdict of acquittal.		Number and percentage of cases in which the Judge differed from the verdict of conviction.		Total number of cases brought to trial.	Total number and percentage of cases in which the Judge differed from the verdict of the Jury.		Number and percentage of cases in which the Judge differed from the verdict of acquittal.		Number and percentage of cases in which the Judge differed from the verdict of conviction.		Total number of cases brought to trial.	Total number and percentage of cases in which the Judge differed from the verdict of the Jury.		Number and percentage of cases in which the Judge differed from the verdict of acquittal.		Number and percentage of cases in which the Judge differed from the verdict of conviction.	
		Number.	Percentage.	Number.	Percentage.	Number.	Percentage.		Number.	Percentage.	Number.	Percentage.	Number.	Percentage.		Number.	Percentage.	Number.	Percentage.	Number.	Percentage.
1887	58	6	10·3	6	10·3	...	...	106	18	16·9	15	14·1	3	2·8	151	15	9·9	15	9·9	...	...
1888	31	6	19·3	6	19·3	...	...	118	14	11·8	13	11·01	1	·8	180	14	7·7	13	7·2	1	·5
1889	35	6	17·1	6	17·1	...	...	88	11	12·5	9	10·2	2	2·2	155	11	7·09	11	7·09	...	...
1890	42	7	16·6	5	11·9	2	4·7	93	15	16·1	13	13·9	2	2·1	151	9	5·9	9	5·9	...	...
1891	37	2	5·4	2	5·4	...	...	90	12	13·3	9	10	3	3·3	154	12	7·7	11	7·1	1	·6
Total .	203	27	13·3	25	12·3	2	·9	495	70	14·1	59	11·9	11	2·2	791	61	7·7	59	7·4	2	·25

From F. C. DAUKES, Esq., Secretary to the Chief Commissioner of Assam, to the Secretary to the Government of India, Home Department,—No. 4661—J., dated the 11th October 1892. No. 141.

I am directed to acknowledge the receipt of your letter No. 1109, dated the 25th August 1892, on the subject of the working of the system of trial by jury before the Courts of Session in Assam, and, in reply, to state that trial by jury in the Assam Valley Districts is limited to offences under Chapters VIII, XI, XVI, XVII and XVIII of the Indian Penal Code (see Notification dated the 17th September 1868, *Calcutta Gazette*, page 1614), and that the Chief Commissioner has always considered that the introduction of the jury system into Assam was premature. Mr. Ward, however, agrees in the view expressed by the Government of India that it is not desirable that the system should be now abandoned altogether.

2. When reporting on the jury system in Assam in 1882, Mr. Ward, who was then Judge of the Assam Valley Districts, pointed out that the results were not worse than they were in Bengal. He did not, therefore, recommend that trial by jury should be abolished. The question of limiting the system to certain offences only did not then arise. Now that this question has been brought forward, I am to say that the Chief Commissioner is quite prepared to accept the suggestion of the Government of India that the jury system in Assam should be limited, as it is in the North-Western Provinces and Oudh, to the following offences under the Penal Code :—

Sections	363-369, 372, 373 (kidnapping and abduction).
Section	376 (rape).
Sections	379-382 (theft).
Ditto	392-395, 397-399, 401 (robbery and dacoity).
Ditto	403-404 (criminal misappropriation).
Ditto	411-414 (receiving or possessing stolen property).
Ditto	426-432, 434-436, 440 (mischief).
Ditto	448, 450-462 (house-trespass, etc.).
Ditto	493-498 (offences against marriage).

The necessary notification will accordingly be issued under section 269 of the Code of Criminal Procedure.

From the Government of India, to Her Majesty's Secretary of State for India,—No. 32, dated the 21st December 1892. No. 142.

We have the honour to forward, for Your Lordship's information, copies of the papers entered in the annexed schedule relative to an enquiry which has recently been made into the working of the system of trial by jury before Courts of Session in this country.

2. The jury system prevails in Sessions Courts in India only in a comparatively small number of districts and in respect of particular classes of offences. Section 269 of the Code of Criminal Procedure of 1882, following in this respect the provisions of the Codes of 1861 (section 322) and 1872 (section 233), authorizes the Local Government to direct by order in the official gazette that the trial of all offences or of any particular class of offences shall be by jury in any district, and also to revoke or alter any such order from time to time as may be found necessary. Certain Local Governments have at various times taken action under the powers conferred by this section or the corresponding sections of previous Codes, and the result is that trial by jury now obtains in Sessions Courts in respect of a limited group of offences in the Madras Presidency generally, and in a few selected districts of Bengal, Assam, the North-Western Provinces and Oudh and the Bombay Presidency. The system has not been introduced at all in the Punjab or the Central Provinces. In Burma it is in force only in the Recorder's Court at Rangoon and in the seaport town of Moulmein; it was introduced in Akyab in 1863, but was withdrawn from that town in 1875. The Province of Burma, however, was not included in the scope of our recent enquiry.

The enquiry did not extend to the working of the jury system in Presidency towns. All cases committed to the various High Courts are tried by jury under rules special to those Courts; and, so far as we are aware, the system in Presidency towns has worked with fair success. The remarks which follow have reference only to the jury system as carried out in Sessions Courts in the interior.

3. In 1884 the Government of Lord Ripon considered the advisability of urging the Provincial Governments to take more general action under the powers enabling them to extend the system of jury trials in Sessions Courts, but, after a careful review of the results, it was decided that it was not expedient to take any steps in this direction. The correspondence on the subject between the Bengal Government and the High Court, and the other officers in

Bengal who were consulted, will be found in the Proceedings Volumes of that Government noted on the margin. Mr. Peacock's letter No. 1924—J., dated the 17th July 1884, contains an interesting review of previous discussions and opinions down to 1872, when the Criminal Procedure Code of that year introduced the safeguards against improper verdicts which have since been continued. It will be seen that in their letter No. 1271, dated the 22nd April 1885, the High Court (three Honourable Judges dissenting) expressed a strong opinion that, for reasons given by them, the time had not arrived for any further extension of the system of trial by jury in the Lower Provinces. Among those reasons were (1) the difficulty of procuring proper persons as jurors, and the distaste for the duty shown by those whose services as jurors are especially desirable ; (2) the prevalence of superstition and prejudice, which not unfrequently led to failures of justice; (3) the occasional perversity of jurors, instances of which had come to the notice of the Judges; and (4) the inability of the juries to grasp numerous details in complicated cases.

Proceedings of the Bengal Government in the Judicial Department, for July 1884, pages 9—14.

Proceedings in the Judicial Department, for October 1885, pages 197—210.

4. In 1888 our attention was drawn to the opinions expressed in some of the Provincial reports on the administration of the police and criminal justice that there had been a considerable increase of crime in late years, and under our orders an enquiry was made into the state of crime in the larger Provinces, the results of which were reported to your Lordship's predecessor with our Judicial Despatch No. 24, dated the 8th July 1890. It was alleged by several of the authorities consulted that the jury system had favoured the escape of criminals, and the inefficient working of the system was stated to be one of the causes of failure of justice. We accordingly directed a special enquiry into this matter in our letters Nos. 740—745, dated the 31st May 1890 (enclosures Nos. 1 to 3 to this Despatch). We now forward copies of the replies which we have received from Local Governments (enclosures Nos. 4 to 11), and copies of the letters which, after considering these replies and the opinions of the Judges of the High Courts and local officers, we have addressed to the several Governments summing up our conclusions on the subject (enclosures Nos. 12 to 16).

5. The results of the working of the jury system have to be considered from two points of view:—

First, with reference to the localities and classes of offences to which the system has from time to time been applied by Local Governments; and

Secondly, with reference to the restrictions which have from time to time been imposed on the system by law, and the further restrictions now proposed as safeguards against failures of justice.

6. In the Madras Presidency the jury system was first introduced in 1862-63 in certain selected districts, and cases punishable under the following sections of Chapter XVII of the Penal Code (offences against property) were declared triable by jury :—sections 379, 380 and 382 (theft), 392 to 395, 397 to 399 and 400 (robbery and dacoity), 411, 412 and 414 (receiving or possessing stolen property), 451 to 459 and 461 (house-trespass in order to commit theft, etc.), and attempts to commit and abetments of these offences. The system was considered to work satisfactorily, and by the Madras Government's Order No. 811 (Judicial), dated the 20th March 1883, it was extended to all the Sessions divisions of the Presidency except those in the Agency tracts of Ganjam and Godavari. It was at the same time withdrawn from the Vizagapatam Agency, in which it had not been found successful. The classification of the offences declared triable by jury remained the same as before. The subsequent working of the system, as noticed in the annual reports and in the special reports recently under our consideration (enclosure No. 4), has on the whole not been satisfactory, and a general tendency on the part of juries to convict on insufficient evidence has been complained of by many officers. Our conclusion as regards this Presidency are summed up in paragraph 6 of our letter of the 25th August 1892, to the address of the Madras Government (enclosure No. 12). The classes of offences declared triable by jury seem to be on the whole well chosen, and are, indeed, in our opinion capable of some slight extension; but we doubt whether the system is thoroughly suitable to all the areas to which it has been applied, and we are not satisfied that the defects which have been brought to notice are not in some measure due to the premature and wholesale extension of trial by jury to every district throughout the Presidency. We have commended this point to the consideration of the Local Government.

7. In the Bombay Presidency trial by jury was introduced in the Poona District in 1867; in 1884-85 it was extended to the districts of Ahmedabad, Belgaum, Thana and Surat, and to the city of Karachi. It thus obtains in six out of the twenty-three districts which constitute the Presidency. Offences are classified as triable by jury according to the degree

of punishment attached to them. In Ahmedabad all offences punishable with death (and such offences only), in Belgaum, Thana, Surat and Karachi, all offences punishable with death, transportation for life or imprisonment for ten years, and in Poona all offences so punishable which fall within Chapters VIII (offences against public tranquillity), XI (false evidence and offences against public justice), XII (offences relating to coin and Government stamps), XVI (offences against the person), XVII (offences against property), and XVIII (false documents and offences against property-marks) of the Penal Code, are triable by jury before the Court of Session. We entirely agree with the Local Government, the High Court and local officers generally (enclosure No. 5) as to the unsuitability of the present classification of offences triable by jury. As expressed in the minute of one of the Honourable Judges, a beginning was made "at the wrong end," the trial of offences punishable with death and of other serious offences having been entrusted to juries at the outset, instead of cases involving simpler issues or less serious consequences such as those which have been declared triable by jury in Madras and the North-Western Provinces and Oudh. In Ahmedabad, Surat and Belgaum there appear to have been grave and repeated failures of justice in murder cases, owing to the refusal of the jurors to convict even on clear evidence when there is a probability of a capital sentence being passed. A perusal of the reports leaves no doubt in our mind of the propriety of the recommendation made by the Honourable Justices Birdwood, Telang and Farran, that capital cases should be altogether withdrawn from the cognizance of juries in these three districts. We have asked the Local Government to consider the advisability of revising the list of offences declared triable by jury in the Bombay Presidency; but have not as yet received information whether any action has been taken.

8. In Bengal and Assam (which was then a part of the Province of Bengal) the Local Government extended the jury system in 1862 to the Sessions Divisions of the 24-Parganas, Hooghly (including Howrah), Burdwan, Murshidabad, Nadia, Patna and Dacca, and to the districts comprised in the Assam Valley Division. The system thus prevails in eight districts (constituting seven Sessions Divisions) out of forty-six in Bengal, and six districts (constituting one Sessions Division) out of eleven in Assam. The offences which were made triable by jury in these areas are those which fall under Chapter VIII (offences against public tranquillity), Chapter XI (false evidence and offences against public justice), Chapter XVI (offences against the person), Chapter XVII (offences against property), and Chapter XVIII (false documents and offences against property-marks) of the Penal Code, and also attempts to commit and abetments of these offences. In the Assam Division all cases committed to the Court of Session were declared triable by jury in 1862; but in 1868 the operation of the system was restricted to the offences falling under the five chapters mentioned above. The reports received from the Bengal Government (enclosures Nos. 6 and 7) and the Calcutta High Court (enclosure No. 8) show that the jury system has worked in an extremely unsatisfactory manner in the Lower Provinces, and that flagrant miscarriages of justice are of not uncommon occurrence in important classes of cases. Very recently the Bengal Government, acting under the powers conferred by section 269 of the Criminal Procedure Code, has revised the list of offences triable by jury. It now includes all offences under Chapter XI of the Penal Code (false evidence and offences against public justice), the offences of kidnapping, abduction and rape, sections 363 to 369, 373 and 376 in Chapter XVI (offences against the person), all offences under Chapter XVII (offences against property), and Chapter XX (offences relating to marriage), and also attempts to commit and abetments of any of these offences. These changes have been made with a view to the improvement of the jury system by withdrawing from its application those offences which experience has shown to be unsuitable for trial by jury and the trial of which has brought most discredit on the system in Bengal. In connection with this subject we invite Your Lordship's attention to the letter of the Bengal Government, No. 4527—J., dated the 12th December, and its enclosures (enclosure No. 20 of this Despatch), which exhibit in a tabular form some statistics of the results of jury trial during the past five years in the eight districts where it is in force. It will be seen that in that period 1,489 cases were tried with the assistance of juries, of which 698 came under heads now withdrawn from their cognizance, while 791 remain so triable. Of the former, the Judge differed, or rather was constrained to record his dissent, from the verdict of the jury in 97 cases, or 13·8 per cent. : in 62 cases or 8·8 per cent., he referred the verdict to the High Court under section 307 of the Criminal Procedure Code, and in 34 cases, or 4·8 per cent. that Court reversed or modified the finding of the jury. Of the latter, the Judge differed in only 7·7 per cent., and referred in only 4·1 per cent., while the High Court interfered with the verdict in only 13 cases, or 1·6 per cent.

The second table is still more instructive, showing that in murder cases alone more than 10 per cent. (22 out of 203) were referred to the High Court as having resulted in a distinct failure of justice, and that in 13 cases, or 6·4 per cent., the High Court actually set aside the verdict. In the other cases now withdrawn (495), the Judge differed in 14·1 per cent., but referred only 8·08 per cent., and obtained a modification of the jury's verdict in 4·2 per cent.

The fourth table shows that of the 27 cases in which the Judge expressed dissent from the verdict in charges of murder, in 25 he differed from an acquittal and in only two from a conviction. Under the other heads of cases now withdrawn the Judge differed from the jury in 59 cases of acquittal, or 11·9 per cent., and in 11 cases of conviction, or 2·2 per cent.

These statistics appear to us entirely to justify the action taken by the Bengal Government and conspicuously so as regards murder cases. It is to be remembered that of these cases the great majority are of a simple character, offering little difficulty in their decision: most of the offences which come to trial are committed by low-caste persons in a humble station of life, and there are few or no inducements for the jury to return a perverse verdict. The cases in which such a verdict is returned are usually those in which a person of respectable caste or station is involved, and these necessarily form but a small proportion of the whole. But the scandal caused by the perverse acquittal of a Brahman or other well-to-do persons, and the injury to public morals by the lessons thus taught that such persons can commit crime with impunity, are very great. We consider it of the utmost importance that such miscarriages of justice should be prevented, and that no countenance should be given to the idea that the Courts apply one description of justice in dealing with persons of respectable birth or traditional sanctity, and another in dealing with the landless labourer or low-caste aboriginal.

Where the latter are concerned, juries, except where religious objections to being the cause of taking life prevail, are not generally unwilling to convict, but these cases, as already noticed, are usually easy of decision, and the assistance afforded by the jury to the Judge is not greater than he would derive from assessors, whom he is able freely to consult on all questions of Native feeling and usage.

It will be observed that the Bengal Government has now for the first time added to the list of offences triable by jury those under Chapter XX of the Penal Code, relating to marriage.

The cases left for trial by jury in Bengal, even after the reduction now made, are more numerous than those which have hitherto been so triable in Madras and the North-Western Provinces and Oudh. Although fewer cases will in future be tried by juries in eight districts, the revised arrangements, after they have been sufficiently tested by experience, may render it possible to extend the jury system to areas where it has not yet been introduced. Under the former arrangements it was found impossible to effect any extension of the system since it was first applied as an experiment in 1862.

The Chief Commissioner of Assam has also revised the list of offences triable by jury in that Province so as to assimilate it to the list adopted in the North-Western Provinces and Oudh as described in the next paragraph.

9. In the North-Western Provinces and Oudh the jury system is in force only in Allahabad, Benares and Lucknow (or in 3 out of 49 districts), where it was introduced in 1885. The cases triable by jury are those relating to offences punishable under sections 363 to 369, 372 and 373 (kidnapping and abduction), and 376 (rape) in Chapter XVI of the Penal Code (offences against the person); sections 379 to 382 (theft), 397 to 399 and 401 (robbery and dacoity), 403 and 404 (criminal misappropriation), 411 to 414 (receiving or possessing stolen property), 426 to 432, 434 to 436 and 440 (mischief), 448 and 450 to 462 (house-breaking, burglary, etc.), in Chapter XVII (offences against property); all offences falling under Chapter XX relating to marriage); and attempts to commit and abetments of these offences. The opinion of the Local Goverment is that, restricted in this manner, the jury system has, on the whole, worked satisfactorily in the three districts where it prevails.

10. From the summary just given it will be seen that the system of trial by jury before the Court of Session is not an established part of the machinery of justice in this country, but an exceptional procedure which the law empowers the Local Government to introduce in any particular area and in respect of particular classes of cases, and to extend, restrict or modify from time to time as may be found necessary. It is only in force in a very small proportion of the districts in Bombay, Bengal and the North-Western Provinces and Oudh. In Madras, where it has been more widely introduced, it is confined to certain specified offences against property of which theft is an element. In the North-Western Provinces and Oudh it is limited in a similar manner, but extends also to the offences of kidnapping, abduction, rape, criminal misappropriation and mischief, and to those relating to marriage. In the latter Provinces the system appears to have worked satisfactorily; it has been cautiously introduced, and the offences classified as triable by jury have been carefully selected. In Madras it is reported not to have worked well in recent years, possibly

in consequence of its premature extension to the entire area of the Presidency except the Agencies or non-regulation tracts. In Bengal and Bombay, where the classification of the offences declared triable by jury was based on a different principle and includes a wider range of cases, the results are more unfavourable, and the system is reported to have been the source of grave scandals in the administration of justice, notably in cases of murder and culpable homicide. It is unnecessary for us to repeat here what is stated in detail in the report received from these Provinces. Your Lordship will observe from the papers (enclosures Nos. 4 to 11) that in certain classes of cases juries in India have been found to be devoid of a due sense of their responsibility and public duty. If the jury system is to be placed on a proper footing, so as to be capable of assisting, instead of tending to defeat, the due administration of justice, it seems to us essential that cases in which the personal feelings or caste and social prejudices of the jurors interfere with their public duty should, as far as possible, be excluded from trial by jury, as well as cases in which jurors are liable to be influenced by extrinsic reasons (such as a disinclination to put it in the power of the Judge to pass a capital sentence) or by their sympathy with criminals, and cases which present a complication of details requiring an appreciation and discrimination of the evidence beyond the mental capacity of the persons at present available to serve on juries. The list in force in the North-Western Provinces and Oudh seems to us suitably to classify the offences which may under present circumstances be properly entrusted to the cognizance of juries. It is more comprehensive than the Madras list, and at the same time it excludes cases, such as those of murder and culpable homicide, in which the personal feelings and prejudices of the jurors are most liable to lead to failure of justice, and cases such as those relating to riots, which require careful and minute attention to the evidence and an intelligent discrimination of the parts of it bearing against each individual accused. The latter class of cases generally involve the placing of a number of persons on their trial at the same time, and the hearing frequently extends over several days. It is not the practice nor is it possible in this country to lock up the jurors at night and they cannot be kept away from outside influences.

11. Turning now to the restrictions which have hitherto been found necessary, and the further checks which have been proposed to safeguard the system of trial by jury against failures of justice, it is perhaps needless to remind Your Lordship that the Criminal Procedure Code provides that all trials before the Court of Session in this country shall be either by jury or with the aid of assessors. It is left to the Local Government to determine the number of persons constituting the jury, provided that it must consist of not less than three or more than nine persons. In trials with assessors the Sessions Judge is required to choose two or more persons, as he thinks fit, from amongst those summoned to act as assessors. In all sessions trials, therefore, whether with or without a jury, the Judge has two or more non-official persons, generally natives of India, associated with him in the hearing of the case. Assessors are taken from the same classes of persons as jurors, and can be freely referred to by the Judg for advice or opinion upon any question of fact or local usage: he can only communicate with a jury through their foreman and in view to ascertain their verdict. At the conclusion of the trial the opinions of the assessors are duly recorded, but the Judge is not bound to conform to them, although we are aware that both the Sessions Judges and the High Court, in the absence of any special reason to the contrary, attach much weight to their opinions. There is a right of appeal on the facts to the High Court against the finding of a Judge in a trial with assessors. In a trial with the aid of a jury the Judge is bound to act on the verdict of the jurors, or even of a majority of them, except when he differs from them so completely as to consider it necessary for the ends of justice to submit the case to the High Court. In such event the law (section 307 of the Criminal Procedure Code) requires him to refer the case with a record of the grounds of his opinion, and empowers the High Court to exercise in the disposal of the reference any of the powers which it may exercise on an appeal, and to acquit or convict the accused of any offences of which the jury could have convicted him, and on conviction to pass such sentence as might have been passed by the Sessions Court. Except in cases in which such references are made, the verdict of a jury, or even of a bare majority of the jurors, is final, and there is no appeal on the facts to the High Court.

This statement of the law, however, requires qualification in regard to capital cases. Whenever a sentence of death has been passed, whether upon a jury's verdict of guilty or after a conviction by a Judge, the entire proceedings have to be submitted to the High Court and are considered upon the merits by a bench of two Judges. Where, however, the jury, or a majority of the jurors, have brought in a verdict of not guilty upon a charge of murder, it is absolutely conclusive if, for any reason, the Judge abstains from exercising the special power given to him by section 307. Some of the reasons by which Judges are influenced in this matter are indicated below in paragraph 14.

12. Under the Criminal Procedure Code of 1861, the verdict of a jury was in all case

final as to the facts, and the Sessions Judge had no power of declining to give effect to it. The safeguard now embodied in section 307 of the Code of 1882 was first imposed in 1872. The changes made and the reasons for them can best be stated by quoting from the Minute of Mr. Justice Prinsep (enclosure No. 8), concurred in by the Honourable Justices Wilson, Pigot and Macpherson of the Calcutta High Court :—

The system of trial by jury outside Presidency towns was first introduced by the Code of Criminal Procedure, 1861, and was extended to some selected districts in Bengal, in regard to certain offences only, in 1862. By that law the verdicts were conclusive, even on appeal, except on a point of law, and it was further provided that there might be a verdict by a majorty provided that that majority was not a bare but an absolute majority of the jurors depending on the number of the persons, constituting the jury, Thus, if the jury consisted of five, seven or nine persons, a majority of four, or five or six, respectively, was necessary for a verdict (section 328). If the verdict was not unanimous or of such a majority of the jurors, a re-trial was necessary.

In consequence of numerous well-founded complaints of failure of justice, the Legislature, in the amended Code of 1872, altered the effect and also the constitution of the verdict of a jury. It provided (section 263) that if a Sessions Judge disagreed with the verdict, and considered it necessary for the ends of justice that he should do so, he should not record judgment on that verdict, but should submit the case to the High Court. It further provided that the High Court should deal with a case so submitted as it would with an appeal, convicting or acquitting the accused person on the facts as well as law on the charges regarding which the reference might have been made. At the same time, however, the Code of 1872 also enabled a Sessions Judge to receive and pass judgment on the verdict of *any* majority of the jurors, if he did not so disagree with it. The actual responsibility was thus taken from the jury and placed on the Sessions Judge and through him on the High Court. In appeal or revision the verdict of a jury was final except on a point of law; but in a case submitted for confirmation of sentence of death it was always open to the High Court to consider and find on the facts notwithstanding the verdict of a jury.

The Code of 1882, section 307, provided that if a Sessions Judge should disagree with the verdict so completely that he considered it necessary for the ends of justice to submit the case to the High Court, he might refer the case to the High Court and abstain from passing judgment upon such verdict. It also provided that in dealing with a case so submitted the High Court may exercise any of the powers which it may exercise on an appeal; but it may acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it.

13. A urther restriction of some importance was imposed on the jury system in 1886. Under section 269 of the Criminal Procedure Code as enacted in 1882 it was provided that when an accused person is charged at the same trial with several offences of which some are and others are not triable by jury, he should be tried by jury for all such offences. In 1885 the Madras High Court drew attention to this provision in the following terms :—

The effect of this clause is in some cases to make the offence of murder triable by jury, *e. g.*, where a child has been kidnapped, robbed of its jewels and murdered. Crimes of this description unfortunately are of not infrequent occurrence. The Government are probably aware how reluctant a native jury is to convict of a capital offence, even on the clearest evidence, and have always excluded murder from the category of offences which they have made triable by jury. At the present moment the High Court has before it such a case in which the evidence of the two offences being identical, the jury has thought fit to return a verdict of guilty of robbery but not guilty of murder. The Judge dissented from the latter part of the verdict, and referred the case under section 307. It is possible that this Court may find it necessary to convict of murder and even to pass sentence of death, but it will naturally feel great reluctance to pass such a sentence where it is overruling the verdict of a jury.

In view of the difficulties which might arise and of the general inexpediency of allowing a charge of murder to be tried by a native jury the High Court was at one time disposed to make a general rule that whenever a person is committed on charges of murder and of an offence triable by jury, the Judge shall, if possible, direct that the charge of murder be separately tried; but it was considered by some of the Judges that such a rule would be beyond the power of the Court, and its effect would undoubtedly be to deprive the accused of a right which the Code apparently intended to give him, to have all the charges against him investigated by a jury.

The views of the High Court were supported by the Madras Government, and the second Clause of section 269 was modified accordingly. As the law now stands, when an accused person is charged at the same trial with several offences of which some are and some are not triable by

jury, he is tried by jury for such of those offences as are so triable, and by the Court of Sessions with the aid of the jurors as assessors for such of them as are not triable by jury. An instance of the effect of the change is given in paragraph 6 of the report of Mr. Fulton, then Sessions Judge of Ahmedabad, and now Officiating Judge of the Bombay High Court, forwarded with the Bombay Government's letter (enclosure No. 5). In a case in which the jury acquitted the accused of the charge of murder he convicted at the same trial of culpable homicide not amounting to murder under section 324 of the Penal Code (not triable by jury), and the conviction was upheld on appeal by the High Court. The evidence of both offences was precisely the same, and the jurors after acquitting the accused of murder had given their opinion as assessors by a majority of 4 to 1 in favour of total acquittal.

14. The alterations made in the law in 1872 and 1882, which were intended to give Sessions Judges and the High Courts power to prevent failures of justice and to correct wrong verdicts, have not been altogether successful in fulfilling their intention. With reference to the provisions of section 263 of the Code of 1872, Mr. Justice Prinsep writes:—"The Judges of the High Court, however, on any reference so made, refused to consider the case on its merits unless they were first shown that the verdict, which the Sessions Judge had refused to accept, was a perverse or unreasonable verdict; that is to say, they attached more weight to such a verdict than to the opinion of the Sessions Judge who had refused to accept it because he considered it to be against the weight of evidence. The first case, I believe, in which this view of the law was not adopted is the case of Empress *versus* Makhan Kumar, I, Calcutta Law Reports 275, decided on June 23rd, 1877, but the practice was not completely changed; it varied according to the inclinations of individual Judges." Referring to the changes made in section 293 (307) by the Code of 1882, Mr. Justice Prinsep observes:—"The practice in this High Court still varied. The matter was fully considered and discussed in the judgment delivered on 29th August 1887, in the case of Empress *versus* Itwari Sahu, Indian Law Reports, XV Calcutta 269, but the practice is still unsettled. I have followed the course of legislaiton and of our practice at some length, to show the difficulties under which Sessions Judges labour in dealing with cases in which they think that the verdicts are contrary to the weight of the evidence. I have strong grounds for knowing that this uncertainty prevents them from referring cases, and that consequently failures of justice not unfrequently occur. I can speak from my own experience as a Sessions Judge and also from cases brought to my notice since I have occupied a seat in the High Court." An examination of the reports received from the several Provinces confirms Mr. Justice Prinsep's view that one of the reasons for the failure of these provisions of the Code is the strong disinclination shown by the High Courts to interfere with the verdicts of juries unless they are shown to be perverse or corrupt. Hence it is that comparatively few references are made by Sessions Judges. A remarkable instance of an omission on the part of an experienced Sessions Judge of high reputation, who has several times acted as a Judge of the High Court, to refer to the High Court a case in which a notorious failure of justice occurred, is given in the Bengal Government's confidential letter No. 4675—J., dated the 21st December 1891 (enclosure No. 7). We observe, however, that there has been a tendency in recent years for the Judges of the High Courts to abandon the view that a verdict must be shown to be perverse to justify interference with it under section 307 of the Code. In several recent cases the High Courts have laid down the principle that the Sessions Judge is bound to refer cases in which he thinks that the verdict if accepted would lead to a failure of justice, and they have shown their willingness to exercise the discretion which the law confers on them of dealing with references under this section on the merits as if they were appeals.

15. Your Lordship will observe from the papers forwarded that there is a considerable body of opinion among the authorities consulted that further reforms are urgently required on the working of the jury system to safeguard it against failures of justice. The reforms suggested group themselves into two classes, those which cannot be undertaken without a change in the law, and those which can be carried out under the law as it stands at present. The following are the proposals made by Local Governments and the High Courts for amending the law relating to jury trials:—

(1) It is proposed by the authorities named in the margin that section 307 of the Code should be so amended as to make a reference to the High Court obligatory on the Sessions Judge in every case in which he differs from the jury or thinks that the verdict of the jury is contrary to the weight of the evidence.

The Madras Government.
The Bengal Government.
The Calcutta High Court,—Prinsep, Wilson, Pigot, Macpherson, Tottenham, Beverley, Trevelyan, JJ.

Three Judges of the Madras High Court support this recommendation to some extent, but do not go so far as to advocate making such references compulsory.

(2) In order that the above change may be effectual it is suggested by Mr. Justice Beverley "that it should be distinctly laid down that it is the duty of the High Court in such references to determine the case on the merits in the same way as on an appeal from a sentence passed in a trial by a Sessions Judge with assessors." A similar suggestion is made in the Minute of Mr. Justice Prinsep. The effect of this suggestion would be to bring the practice of all High Courts into accord with what is already held by many of the Honourable Judges to be the correct practice.

(3) The concession in one form or another of a right of appeal on the facts against the verdict of a jury is advocated by the Bengal Government, the Calcutta High Court, and some of the Judges of the Madras High Court. The Bengal Government would grant an appeal only when the jury is not unanimous and the Judge does not record his agreement with the majority. In the Calcutta High Court, Mr. Justice Beverley is of opinion that no change would be required in the law of appeal if section 307 were amended as suggested in the first and second proposals; the remaining Judges who recommend these proposals would grant a right of appeal in addition to them. The Judges named in the margin would allow an appeal on the facts against *convictions* by juries only if the present law as to receiving the verdict of a bare majority of the jurors remains unaltered. As regards cases punishable with death they admit that some further safeguards are required, and they recommend that these, and at the discretion of the Sessions Judge, other cases also be tried by special juries.

Norris, Ghosh and Banerji, JJ.

(4) The Bengal Government recommends that the Sessions Judge should be required to ascertain and fully record the reasons of the jury for their verdict. This recommendation is based on the suggestions of experienced Sessions Judges. The grounds for it are forcibly stated in paragraph 4 of the report by Mr. Beighton, then District and Sessions Judge of Dacca, enclosed with the Bengal Government's letter (enclosure No. 6).

(5) As an alternative to the above it has been suggested by the Honourable Justices Birdwood, Telang and Candy, of the Bombay High Court, that the Sessions Judge should be empowered to require from the jury special verdicts on particular issues of fact (including the credibility of particular witnesses), as well as on the case for the prosecution and the defence generally.

Of the proposals summarized above, we have decided to adopt only the last. The reasons for our decision are fully stated in our letters of the 25th August last to Local Governments (enclosures Nos. 12 or 16), and need only be briefly referred to here. As regards the first proposal, it is already obligatory on a Sessions Judge to refer to the High Court cases in which he thinks that the verdict of a jury would cause a substantial failure of justice, and we do not think it desirable that he should be required to make references to the High Court for setting aside the verdict of a jury except in cases in which he is satisfied that a failure of justice is involved.

The second proposal relates to the practice of the High Courts. Section 307 of the Criminal Procedure Code already gives the High Courts the fullest discretion to exercise on a reference under this section any of the powers which it may exercise on an appeal, and their latest decisions as to the manner in which this discretion shall be applied are quite satisfactory. If, however, the principles laid down in these decisions are not generally adhered to, we shall be prepared to give this point further consideration.

Our reasons for not accepting the third proposal at present are stated in the next paragraph.

The fourth and fifth proposals involve no material change, but are directed towards removing a distinct defect in the existing system. Although a Sessions Judge is bound under section 307 of the Code to refer cases to the High Court when he disagrees with the verdict of the jury so completely as to consider this course necessary for the ends of justice, the law (section 303) does not empower him to ascertain the reasons of the jury for their verdict or the facts found by them on which the verdict of acquittal or conviction is based. Without these particulars it is often difficult for the Sessions Judge to decide whether the case should or should not be submitted to the High Court; while, if he decides to make a reference, the High Court will have insufficient materials before it for determining whether the verdict is one which should be upheld or not. For the reasons given in our letters to Local Governments we prefer the fifth to the fourth proposal.

16. The results of the recent enquiry and the combined weight of high authority which it disclosed appeared to us to point distinctly to the adoption of one or other of two alternatives: (1)

either by legislation to impose the further restrictions on the jury system which are declared by the Local Governments and High Courts to be necessary to provide against failure of justice, or (2) to invite the responsible Local Government to consider the question of making such necessary changes in the system as are practicable under the existing law.

We were unwilling to impose the restrictions suggested in the first three proposals set forth in the last paragraph. Although trial by jury in India must necessarily be subject to very different conditions from those obtaining in countries where the unanimous verdict of twelve is essential, the distinctive feature of the system is the comparative finality of the verdict, and the responsibility which is consequently imposed upon the jurors in arriving at a right decision. The effect of the proposals would be to destroy this finality and to level down a trial by jury to the system of trial with assessors. Under the first proposal the responsibility for the correctness of the verdict would, in all cases, rest primarily with the Sessions Judge and ultimately with the High Court. If, in addition to this, the third proposal were adopted and an appeal allowed on the facts against the verdicts of juries, there would be no practical difference between trial by jury and trial with assessors. Considering that in every sessions trial where there is no jury the Judge is assisted by two or more assessors, we do not see what advantages there would be in retaining the jury system at all in such a form. The sense of responsibility on the part of the jurors which arises from the verdict being final would be destroyed, and the changes would involve the practical abolition of trial by jury. It is scarcely likely that a system on such lines would be further extended to any part of the country in which it is not now in force.

17. If, therefore, the jury system is not merely to be tolerated and continued in name as a concession to certain sections of native opinion, but to be made a real and effective part of the machinery for the administration of criminal justice, it is necessary that it should be reformed and given a fresh trial on the lines stated in paragraph 10 of this Despatch. If experience shows that the system on its new footing works satisfactorily it may be possible to extend it to a larger area, and from time to time to add other offences to the list of those cognizable by juries in particular localities.

18. A further reform which may be found practicable in some districts under the existing law is the careful revision of the list of persons liable to serve as jurors, so as to exclude incompetent persons as far as possible. The local authorities generally are alive to this point, and it is one which can best be dealt with by them. We are entirely opposed to the establishment of special juries outside the Presidency Towns. The reasons against this change are stated in many of the enclosed reports, and are thus summarized by Mr. Justice Prinsep:—"It would tend to deprive ordinary juries of their best men, and any one conversant with the constitution of juries in the mofussil knows how difficult it is to obtain what is recognized as a good jury. Moreover, there would be the same influences at work which have hitherto injuriously affected verdicts, while from the probable greater weight to be given to the verdict of a special jury, there would be a greater disinclination to set such a verdict aside in cases referred to the High Court...... There would, in my opinion, be no security for a proper verdict against the influences I have mentioned, while the remedy allowed by law would be enforced with greater difficulty. Cases of manifest failures of justice would consequently increase." It appears from some of the reports that considerable difficulty is experienced in many districts in the preparation of the list of persons liable for service on an ordinary jury, and we agree in the view that the introduction of special juries would increase this difficulty by removing the most competent men available for the ordinary jury, while on the other hand special juries in the interior would not be much more reliable than ordinary juries in the classes of cases in which jury trials have been found especially unsatisfactory.

19. Even with the revised arrangements it will be necessary to maintain all the existing safeguards against miscarriages of justice, and also to modify the provisions of section 303 of the Criminal Procedure Code on the lines proposed by the Judges of the Bombay High Court (clause 5 of paragraph 15 above). Should these precautions be found insufficient after further experience, it may hereafter be necessary to consider the advisability of allowing, under certain conditions, an appeal on the facts against the verdict of a jury; but at present, for the reasons above explained, we are averse from this course.

20. In other respects, no alteration of the law seems to be required. The Code, as it stands, makes the Local Governments responsible for the determination of the areas, as well as of the classes of cases, in which trials shall be by jury before the Court of Session. We have carefully considered whether the law should not be amended so as to require the previous sanction of our Government before action, or certain kinds of action, in extending or restricting the system is taken by Local Governments. We have, however, decided that it would

be undesirable in any way to fetter the discretion or limit the responsibility of the Provincial Governments. It appears to us that, provided the Local Governments agree to follow analogous principles in selecting the classes of offences which should be tried by jury, no advantage would be gained by reserving a control in that respect to our Government; the decision whether any particular district is ripe for the application of the system must obviously depend on a minute knowledge of local circumstances and aptitudes, as to which the Provincial Governments alone can be fully informed.

No. 143. From H. J. S. Cotton, Esq., C.S.I., Chief Secretary to the Government of Bengal, Judicial Department, to the Secretary to the Government of India, Home Department,—No. 4723-J., dated the 27th December 1892.

I am directed to submit, for the information of the Government of India and for transmission to Her Majesty's Secretary of State, a copy of the memorial adopted by the public meeting held at the Town Hall on the 20th December 1892, regarding trial by jury in Bengal. The memorial is signed by Maharaja Doorga Churn Law, C.I.E., as Chairman of the Meeting.

2. The Lieutenant-Governor is glad to acknowledge the moderation of the language used, but observes that the memorial imparts no new information and adds no element to the discussion which has not been thoroughly considered, sifted and disposed of in the correspondence on the subject. The memorial is in itself convincing evidence that it would have been of no real advantage to give warning to the public of the action which was about to be taken by Government, notwithstanding that the omission to do so is mentioned in paragraph 5 as a grievance.

3. With reference to the observations contained in paragraphs 5 and 6 of the memorial, the Lieutenant-Governor directs me to deny in the most explicit terms that anything has been done or written by the Bengal Government to justify the assertion that a large percentage of convictions is accepted as a standard of excellence in respect of Criminal Judges. Sir Charles Elliott is surprised that so broad and unqualified a statement should have been made without a particle of evidence to support it. The charge is one peculiarly susceptible of being proved, as, if true, it follows that the Government must not only have declared that it accepted this standard, but also must have shown by its acts that it rewards excellence and punishes bad work according to such a standard. Nothing, however, exists which can support this charge against the Government, or even make it seem a reasonable and probable one in the eyes of any man whose judgment is well balanced and sound. It will be seen from paragraph 4 of Sir John Edgar's letter of 22nd June 1891 that the proportion between convictions in jury and in non-jury districts was a point which was brought before the Lieutenant-Governor's consideration in discussing the merits of trial by jury in Bengal, but that he refused to enter into it or to base any argument on the comparative statistics of convictions in jury and non-jury districts, and relied entirely in his recommendations to the Government of India on the indisputable fact that in a considerable number of cases the Judge has disagreed with the jury and referred the verdict for the orders of the High Court, and that the High Court in spite of very powerful leanings towards the course of upholding the jury's verdict has been frequently compelled to upset it.

4. Similarly in paragraph 7 of the memorial the passage in the letter from the Government of India regarding the merits of the trial by jury as a means for the repression of crime has been misread. Any instrument which makes justice more certain and more discriminating must tend to repression of crime. Both the acquittal of innocent persons and the conviction of the guilty tend in this direction, and the memorialists are led away by a pre-conceived notion in misapprehending that the words used in this correspondence can refer to the securing of conviction only.

5. I am to add that the statistics quoted in Schedule I of the memorial appear to be correctly reproduced from the Annual Administration Reports to which they refer, and that the figures given for the four years 1887, 1888, 1889 and 1890, differ in unimportant particulars from those which have already been submitted to the Government of India in greater detail with my letter No. 4527—J., dated 12th December 1892. An attempt will be made to reconcile these discrepancies in communication with the High Court, but it may be pointed out that they are so small when the aggregate of the four years is taken together as not to affect any argument which may be based on the statistics themselves.

From Maharaja DOORGA CHURN LAW, C.I.E., Chairman of the Public Meeting held on 20th December 1892, to H. J. S. COTTON, Esq., C.S.I., C.S., Chief Secretary to the Government of Bengal,—dated the 23rd December 1892. No. 144.

In compliance with the request made to me as Chairman of the Public Meeting held on 20th December 1892, in Resolution IV of the resolutions passed at the meeting, I have now the honour to forward the memorial adopted by the meeting duly signed by me as Chairman, and to solicit the favour of its being forwarded through the usual channel to Her Majesty's Secretary of State for India in Council.

For purposes of reference, if needed, I also beg to forward under separate cover twenty copies of the memorial.

The Humble Memorial, dated the 23rd December 1892, of the Inhabitants of Calcutta and its Suburbs, in Public Meeting assembled, to Her Majesty's Secretary of State for India in Council. No. 145.

MOST RESPECTFULLY SHEWETH,—

That your memorialists crave leave to approach Your Lordship in Council and to represent to Your Lordship a grievance which has been most unexpectedly thrust upon them by the Government in India by a sudden and serious exercise of the power vested in Local Governments under the Code of Criminal Procedure in respect of trial by jury. The Administration of Assam by a Notification, dated the 11th of October 1892, published in the *Assam Gazette* of October the 15th, withdrew in a large measure trial by jury from the districts "which constitute the Judgeship of the Assam Valley Districts." This Notification is to take effect from January the first next ensuing. The Government of Bengal issued a like Notification, dated the 26th October 1892, published in the *Calcutta Gazette* of October the 26th, and this Notification came into effect on November the 1st, that is, after an interval of only five clear days. It is to the changes made in the system of administration of criminal justice by these Notifications, affecting, as they do, all classes and all communities in the Provinces of Bengal and Assam, that your memorialists now solicit Your Lordship's kind and attentive consideration.

Your memorialists would humbly point out that although the system of trial by jury was applied in the year 1862, after the passing of the Code of Criminal Procedure, to seven districts in Bengal, and to the districts under the then Commissioner of Assam, yet it has all along been looked upon as a safeguard of the liberty of the subject and has enlisted the sympathy and commanded the respect and confidence of the community. They have seen in the system a shield between the rights and privileges of individuals, and defects in the judicial system caused, on the one hand, by Judges being drawn from an Executive Service, and on the other, from the oppression of an ignorant and too-often venal Police. The system has steadily grown in favour with the people by the way it has worked in this city and in the districts to which it has been applied since 1862, and your memorialists crave leave to establish this by the attempt made by His Highness the Maharaja of Darbhanga, in 1884, in the Council of His Excellency the Viceroy for making Laws and Regulations, to secure the extension of trial by jury to all sessions cases and by the repeated expressions of public opinion since that time urging upon the Government in India to concede a larger measure of the jury system.

Your memorialists would further crave leave to point out that the Code of Criminal Procedure was the work of some of the most eminent men who have served the Crown in India, that it was approved and recommended by that illustrious statesman, the Marquess of Dalhousie, and was passed through the Legislative Council by that eminent jurist, Sir Barnes Peacock, and that it continued and gave expression to the wise, far-seeing and consistent policy of the English administration of India from the time when that administration was regularized as the Permanent Government of the country by the Marquess Cornwallis. That statesman laid down in his famous Regulations the principle that it was necessary to secure for the system of laws he was introducing the support of the people and to secure also the association of the natives of the country with the European officers to whom was to be committed the superintendence of the administration of justice. His policy was re-affirmed in 1827 by Regulation X of the Madras Government, and by Regulation XIII of the Government of Bombay. In Bengal your memorialists would refer to Regulation VI of 1832, and they would point out that the great men who formulated the Code of Criminal Procedure, as well as those who passed it in 1861, were but confirming what had been done and laid down by such eminent Indian statesmen as Sir Thomas Munro, the Right Honourable Mountstuart Elphinstone and Lord William Bentinck; and not only so, an examination of the history of the jury system in India will show

that these statesmen did not follow English precedents only. They had observed the success of the jury system which had been introduced into Ceylon, a Crown Colony, so early as March 1812, and they were largely guided by their experience of one of the most ancient, most useful, and most valued institutions of the people of India—the settlement of disputes by a *punchayet* (council of five). It is beyond question that the knowledge of the people of the *punchayet* removed from the jury system in the eyes of the community all appearance of unfamiliarity with an institution so prized in England, and disposed them strongly in its favour. In this connection your memorialists would draw attention to the fact that 'five' is the number most in favour throughout the country for the constitution of a jury. They would also point to the distinction made in Regulation VI of 1832 between civil cases and criminal cases. In civil cases, juries might be resorted to in the Courts specially empowered to employ them. But juries or assessors could be conjoined with the Judge in the trial of all criminal cases, "without the necessity for any special authority from the Government." Again, from its very earliest application to India trial by jury has appealed to the sympathies of the people in a manner altogether exceptional, and in a way not enjoyed by any other institution introduced into the country by the Government. So early as January the 24th, 1831, 4,000 respectable inhabitants of Bombay addressed the Honourable the House of Commons in a petition in which they based a claim for the extension of juries to civil suits on the success of juries in criminal cases. Your Lordship in Council will thus perceive that the policy which introduced the jury system into India has, to an extent, scarcely to be expected by those unacquainted with Indian institutions, been accepted and adopted by the people.

Your memorialists would now solicit permission to point out that the action of the Government of Bengal and the Administration of Assam is the outcome of an official enquiry instituted by the Government of India in May 1890. The correspondence before the public on the subject is contained in the "Calcutta Gazette Extraordinary," published on November the 10th, 1892. From that correspondence it does not appear that the Law Officers of the Crown were consulted in the matter, but it does appear that the weight of evidence is in favour of improving the working of the jury system rather than of abolishing or restricting it. Your memorialists would also point out that there is a conflict of opinion between His Excellency the Governor General in Council and the Governments of Madras, Bombay and Bengal, and other authorities as to the improvements required, or the changes to be effected.

Again, the correspondence is purely official, and there is a marked absence of any expression of public opinion, or of the Associations and public bodies usually accepted as representing that opinion. Not only so, the correspondence as published shows that this question has been submitted for the opinions of officers who, as Magistrates and Commissioners of Divisions, have control of the police, and who are as a matter of course directly interested in bringing about convictions. Throughout the correspondence peculiar stress is laid on convictions as a test of the merits of the system, and much of the action of Government is founded upon the statement that the percentage of convictions obtained in jury trials, in the more serious offences, condemns the system as a failure. On this point your memorialists would crave Your Lordship's attention to Schedules 1 and 2 annexed to this memorial—the first giving an analysis of the returns of trial by jury in the more serious offences, and the second an abstract of the official reports laid before Parliament.

Your memorialists would very earnestly point out that no more fatal blow to the public confidence in the high character and impartiality of the admission of justice in India can be given than by causing officers entrusted with the trial of offences, who are dependent, as regards their career, upon the manner in which the Government they serve may regard the performance of their duties, to believe that the only standard of excellence, as criminal judges, which will be accepted by the Government, is a large percentage of convictions. This would be a grievous mistake for any Government to commit. But in India, with its ignorant police and its untrained judiciary, having at best but a limited knowledge of the complicated conditions of native society, it must have far-reaching consequences which your memorialists, in common with all loyal well-wishers of the Government, cannot sufficiently deprecate and deplore. Your memorialists would also respectfully ask leave to point out the grave anomaly of declaring, by executive action, that the natives of this country are, from whatever reasons, unfitted to act in serious matters as jurors, at the very time when by an increase to the Legislative Councils their intelligence, public spirit, loyalty and anxiety to assist Government receive the most practical acknowledgement and approval.

Your memorialists note with extreme regret that a distinctly false issue was raised in the inquiry initiated in May 1890 by a request made by the Government of India to Local Governments for an expression of their opinion as to the merits of the system of trial by jury

as a means for the repression of crime. Your memorialists most respectfully submit that it could never be intended that any system of trial by jury should operate in such a direction, for under any system the number of cases to be referred to a jury must bear a necessarily small proportion to the total number of criminal investigations. Repression of crime depends mainly upon the comparative adequacy of sentences to the enormity of the offence for which an accused person may be convicted. At page 42 of the 24th number of the Statement on the Moral and Material Progress and Condition of India in 1887-88, there is a remark which supports this contention of your memorialists:—"From an examination of the crime returns of recent years there is reason to think that there may be some justification for the opinion put forward by some authorities that the suppression of crime is to some extent retarded by inadequate punishments." Such a result must, moreover, be due also to the thoroughness and fairness of the preliminary investigations into an offence, that is, to the proper working of the police and the magistracy. On this point your memorialists may quote the opinion of Sir Rivers Thompson, who had himself had considerable experience as a Sessions Judge, recorded in his review of the Report on the Administration of the Police Department for the year 1882:—"It is in the experience of the Lieutenant-Governor that jurors look with much greater strictness into the evidence and to the conduct of Police officers than unassisted Judges, and it is much better that it should be so notwithstanding an occasional miscarriage of justice. The over-scrupulousness of juries, if such it may be called, should have its effect on the action of the police and upon the investigations made in the Magistrate's Courts with results that can only be beneficial."

Your memorialists would, with reference to the manner in which the change was introduced in Bengal, draw Your Lordship's special attention to the fact that not only has there been no complaint on the part of the people that there has been any failure of justice resulting from trials by jury in serious cases or offences, but as will appear from the opinions of some of the Sessions Judges consulted, who themselves regard the system with disfavour, it enjoys an exceptional popularity. It would, therefore, in any case have been an act of impolicy to resort to the power vested in Local Governments by the Code of Criminal Procedure, for such resort would certainly have spread alarm and distrust of the intentions of the Government. But in this case the effect, which your memorialists would in any case regret, has been disastrously enhanced by the manner in which the power has been suddenly and unexpectedly exercised so as to seriously prejudice the rights and privileges enjoyed under the Code, and also the right of the public discussion of matters not material to the interests of Government but of vital importance to the welfare of the people. It could never have been intended that so momentous a change in the policy of Government and in the administration of justice should be brought into effect after a notice of only five clear days. The fact that this has been done has led your memorialists to the conviction that the power given to Local Governments should be guarded in such a way as to save them and the people from such grievances as the manner in which trial by jury has been withdrawn from the jury districts undoubtedly amounts to.

Wherefore, reviewing the policy and facts dealt with in this memorial, your memorialists would humbly pray Your Lordship in Council for protection and redress and that Your Lordship will take into consideration this humble memorial and adopt such measures as Your Lordship in Council may deem just and proper to maintain and extend the privilege of trial by jury and to express your disapproval of a policy which is based upon a reversal of the fundamental and enlightened principles that have consistently guided British rule in India,—which is not supported by the official evidence that has been published, or by an unanimity of opinion as to what is required among the administrations and authorities consulted,—which has in a time of tranquillity, peace and improvement, suddenly plunged the country into an uncalled for agitation and excitement,—which is calculated to provoke in a new and aggravated form discussions on questions of race privileges,—which is called for by no administrative difficulty and no public complaint of any

failure of justice caused by the institution so unexpectedly held up to the country as condemned by its working,—which attacks a privilege the natives of the country have learnt to honour and regard as a protection from wrong and oppression,—and which, by convincing the people that the Government intends to curtail and withdraw privileges and benefits long enjoyed and deeply appreciated, must impair its prestige and disastrously affect all its relations to those committed by Providence to its rule.

And your memorialists as in duty bound will ever pray.

SCHEDULE I.

Extracts from the Administration Reports.

1883-84, page 10.—The number of trials by jury was 344. The verdicts of the jurors were approved by Sessions Judges in 292 cases, wholly disapproved in 33, and partially in 19 cases. No alteration was made in the system of trial by jury as regards the area or offences to which it had been extended. Complaints continued to be made of the unwillingness of juries to convict. There was, however, a decided improvement in this respect in comparison with the result of the previous year.

1884-85, page 47.—The area and offences to which the system of trial by jury extended in former years remained unchanged. The number of trials by jury was 346 during the past as compared with 344 during the previous year. In the past year, the Sessions Judges approved of the verdict of the jury in 263 cases, disapproved of it wholly in 46, and partially in 23 cases, while in 4 no opinion was expressed. The juries were, as usual, reluctant to convict on charges of murder and culpable homicide, but were less scrupulous in convicting of offences against property.

1885-86, page 47.—The districts in which trials by jury were held, and offences were so triable, remained as in previous years. The number of trials by jury was 348, as compared with 346 during the previous years. In the past year Sessions Judges approved of the verdict of the jury in 282 cases, disapproved of it wholly in 35 cases, and partially in 31 cases. In 26 cases only did Sessions Judges disagree with the verdicts so completely as to consider it necessary for the ends of justice to submit the cases to the High Court as a Court of reference. In 25 cases heard by the High Court on reference under section 307 of the Code of Criminal Procedure, the verdicts were set aside in 18 cases, new trials were ordered in 3 cases, and in the remaining 4 cases the verdict was accepted.

1886-87, pages 33-34.—The districts in which trials by jury were held, and offences which were so triable, remained as in previous years. The number of trials by jury was 284, as compared with 348 during the previous year. Of the 284 cases tried by jury during the past year, the Sessions Judges approved of the verdict of the jury in 239 cases, disapproved of it wholly in 29 cases, and partially in 16 cases. In 22 cases only did the Sessions Judges disagree with the verdicts so completely as to consider it necessary for the ends of justice to submit the cases to the High Court as a Court of reference. In 24 cases heard by the High Court on reference under section 307 of the Code of Criminal Procedure, the verdicts were set aside in 13 cases, accepted in 9 cases, modified in one case and new trial ordered in one case.

1887-88, page 37.—The districts in which trials by jury were held, and offences were so triable, remained as in previous years. The number of trials by jury was 339, as compared with 284 in the previous year. Of these 339 cases the Sessions Judges approved of the verdict of the jury in 263 cases, disapproved of it wholly in 33 cases, and partially in 43 cases. In 21 cases only did the Sessions Judges disagree with the verdicts so completely as to consider it necessary for the ends of justice to submit the cases to the High Court as a Court of reference. Of the 22 cases referred under section 307 of the Code of Criminal Procedure, which were before the High Court during 1887, 19 were heard and determined with the result that in 5 the verdict of the jury was reversed, in 10 it was upheld, and in the remaining 4 cases a re-trial was ordered.

1888-89, page 40.—All offences, including abetment and attempts, falling under Chapters VIII, XI, XVI, XVII and XVIII of the Indian Penal Code, were tried by jury in the

districts of Burdwan, Dacca, Hooghly, Patna and the 24-Parganas. Other cases in the Lower Provinces were tried with the aid of assessors. The number of cases tried by jury during 1888 was 305, as compared with 339 in 1887; and in 240 of these the verdict of the jury was concurred in by the Sessions Judge; while it was dissented from wholly in 39, and partially in 26 cases. Of the 26 cases referred under section 307 of the Code of Criminal Procedure, which were before the High Court during 1888, 25 were heard and determined, with the result that in 13 the verdict of the jury was reversed, in 11 it was upheld and in the remaining instance it was modified.

1889-90, page 43.—All offences, including abetment and attempts, falling under Chapters VIII, XI, XVI, XVII and XVIII of the Indian Penal Code, were tried by jury in the districts of Burdwan, Dacca, Hooghly, Patna and the 24-Pargannas. Other cases in Bengal were tried with the aid of assessors. The number of such trials during 1889 was 286, as compared with 305 in 1888. In these 286 cases the Sessions Judges approved of the verdict of the jury in 235 cases, disapproved of it wholly in 25 cases, and partially in 25 cases, while the remaining case was withdrawn before the completion of the trial. Of the 14 cases referred under section 307 of the Code of Criminal Procedure, and which were before the High Court during 1889, 13 were heard and determined with the result that in 5 the verdict of the jury was reversed, in 7 it was upheld, and in the remaining case it was modified.

1890-91, page 44.—The districts in which trials by jury were held, and the offences which were so triable remained as in previous years. The number of such trials during 1890 was 285, as compared with 286 in the preceding year. Of the cases so tried during the year, the Sessions Judge approved of the verdict of the jury in 230 cases, and disapproved of it wholly in 33 cases, and partly in 22 cases. In 20 cases, in which the Sessions Judge disagreed, references were made to the High Court. Nineteen of these references were heard and determined, with the result that in 13 the verdict of the jury was reversed, and in 6 it was upheld.

The following table has been prepared from the figures given above:—

	Tried by Jury.	Approved by Sessions Judge.	Disapproved. Wholly.	Disapproved. Partly.	Opinion not expressed by Sessions Judge.	By High Court. Reversed.	By High Court. Upheld.	By High Court. Modified.	By High Court. Ordered for new trial.
1883	344	292	33	19	...	...	...	...	...
1884	346	263	46	23	14	...	...	...	...
1885	348	282	35	31	...	18	4	...	3
1886	284	239	29	16	...	13	9	1	1
1887	339	263	33	43	...	5	10	...	4
1888	305	240	39	26	...	13	11	1	...
1889	286	235	25	25	...	5	7	1	...
1890	285	230	33	22	...	13	6	...	...
TOTAL	2,537	2,044	273	205	14	67	47	3	8

The figures show that within the last eight years 2,537 cases were tried by jury in the districts of the 24-Parganas, Hooghly, Burdwan, Murshidabad, Nadia, Patna and Dacca. The Sessions Judge approved of the verdict of the jury in 2,044 cases and disapproved of it wholly in 273 cases, and partly in 205 cases. In 125 cases in which the Sessions Judge disagreed, references were heard and determined with the result that in 67 the verdict of the jury was reversed, in 47 it was upheld, and in 3 modified.

SCHEDULE II.

STATEMENTS EXTRACTED FROM THE

Statement exhibiting the Moral and Material Progress and Condition of India presented to Parliament by the Secretary of State for India, pursuant to an Act of Parliament.

No remarks made from 1872-1873 to 1882-1883.

Bengal.—No alteration was made either in the area to which trial by jury has been extended, or in the class of crime. Complaints are still made of the unwillingness of juries to convict, but they show a decided improvement in this respect.

1884-1885.

Bengal.—The reluctance with which native jurymen convict on charges of murder is again complained of in eastern districts.

North-Western Provinces and Oudh.—Hitherto the power possessed by the Lieutenant-Governor and Chief Commissioner, under the various Criminal Procedure Codes, of introducing the process of trial by jury in any district of his administration had never been exercised. In the year under review, however, he adopted a partial and tentative measure by introducing the jury system for the trial of all cases, except homicide and a few other crimes, in the three districts where it was considered difficult to find a sufficient number of men qualified by their education and intelligence to act as jurors, the old method of trial with the aid of assessors was continued.

1885-1886.

Bengal.—No remarks made.

North-Western Provinces and Oudh.—Other modes in which unpaid agencies are employed in the criminal procedure of these provinces are the system of assessors in trials by Sessions Judges and of trial by jury. The introduction, as a tentative measure, of trial by jury, was referred to in last year's report. So far the experiment promises success; but further experience is necessary before deciding on its extension beyond the three Sessions Courts of Allahabad, Lucknow and Benares into which it has at present been introduced.

1886-1887.

Bengal.—In the Sessions Courts, of 284 cases tried by jury, the Sessions Judges disapproved of the verdict in 45 cases. In 22 of them they considered it necessary to submit the proceedings to the High Court, which set aside verdicts in 13 cases.

North-Western Provinces and Oudh.—Jury trial introduced tentatively two years previously at Lucknow, Allahabad and Benares is said to have proved successful. Out of 102 cases tried by jury, the Judge agreed with the verdict in all but 14; and the Commissioner of Lucknow reports that the verdicts given have been honestly and thoroughly worked out.

1887-1888.

Bengal.—Out of 339 cases tried by jury, the Sessions Judges approved of the verdict in 263 cases, disapproved of it wholly in 33 cases, and partially in 43 cases. Out of 21 jury cases referred to the High Court the verdict of the jury was reversed in 5 only.

North-Western Provinces and Oudh.—The experimental introduction of trial by jury in certain classes of offences at Allahabad, Benares and Lucknow continued to give satisfaction during 1887.

1888-1889.

Bengal.—Out of the total number, 305, of the cases tried the verdict of the jury was concurred in by the Judge in 240 cases, rejected in 39, and partially dissented from in 26. Out of 25 cases of reference to the High Court, when the Judge disagreed with the jury, the verdict of the jury was reversed in 13, upheld in 11, and modified in one.

North-Western Provinces and Oudh.—The participation of the natives of the country in the administration of justice as assessors or as juries continued to work satisfactorily. In Oudh, the Judge agreed with the jurors in every case and with the assessors in 4 out of every 5 cases referred to them. In the North-Western Provinces the Judges agreed with the finding of juries in 120 out of 131 cases, and with the finding of assessors in 1,012 out of 1,349.

1889-1890.

Bengal.—Of the 286 cases which were tried by jury in the five districts in which trial by jury is in force, 14 were referred to the High Court, with the result that the verdict of the jury was modified in one case, reversed in 5 cases, and upheld in 7.

North-Western Provinces and Oudh.—The Judge agreed with the jury in 93 per cent. of the cases tried by jury, and with the assessors in 76 per cent.

1890-1891.

Bengal.—Trials by jury were held in 285 cases, in 230 of which the Sessions Judges upheld the verdict of the jury; references were made to the High Court in 20 cases, and of the 19 cases heard the verdict of the jury was reversed in 13.

North-Western Provinces and Oudh.—The percentage of cases, in which the Judge agreed with the finding of the jury was 97 in Oudh, and 85 in the North-Western Provinces ; in trial with assessors the similar percentages were 70 and 82.

From the Government of India, Home Department, to the RIGHT HONOURABLE THE EARL OF KIMBERLEY, K. G., Her Majesty's Secretary of State for India,—No. 1, dated the 4th January 1893. No. 146.

In continuation of our Despatch No. 32 (Judicial), dated the 21st December 1892, we have the honour to forward, for Your Lordship's consideration, a memorial adopted by a Public Meeting held at the Town Hall of Calcutta on the 20th December, in which the memorialists protest against the recent Notification of the Government of Bengal by which certain offences, in eight districts of that Province, have been removed from the cognizance of juries at trials before the Court of Session. We also enclose a copy of the letter from the Government of Bengal with which the memorial was submitted.

2. In our Despatch above referred to we have discussed the subject in detail, and on the present occasion we have little to add to the observations contained in it and the remarks in the Lieutenant-Governor's forwarding letter. The memorial, however, raises a few points on which Your Lordship may expect to receive a somewhat fuller expression of our views. We have numbered the paragraphs for facility of reference.

3. The second and third paragraphs are historical. It is alleged that the jury system in India is akin to the old indigenous method of deciding disputes by *punchayets* or councils of five; and that high authorities have approved of this indigenous institution, and have endeavoured by means of it to associate the people with the administration of justice; and it is pointed out that the statute-book in Madras, Bombay and Bengal contains Regulations long anterior to the Criminal Procedure Code of 1861, providing for the association of juries with Judges in the trial of criminal cases. Reference is made to the favour with which the institution of juries has been regarded in those districts of Bengal where it was introduced in 1862, after the passing of the Code in the previous year, and to the measures urged upon Lord Ripon's Government in 1884 for giving it a wider scope.

On these points we desire to say that we have never been insensible to the great benefits to be expected from associating the people with the Courts in the administration of justice, or to the advantage which the Judges presiding in these Courts must derive from the advice and assistance of well-selected natives of the country sitting with them in the trial of cases. The institution of the *punchayet* has been recognized in many directions by our legislation, and though it is probably now, owing to the growth of the legal profession and the spread of individualism among the people, a less generally accepted method of settling disputes than it was in the early years of this century, when the foundations of our administration were being laid, we have no doubt that it still retains much of its former popularity.

The system of associating native assessors or so-called juries with the Judge in Courts of Session, which was introduced in Bombay by Regulation XIII of 1827, and in Bengal by Regulation VI of 1832, was maintained in force under the three Codes of Criminal Procedure which have been passed by our Legislature. But the memorial is in error in speaking of those Regulations as establishing trial by jury in the sense in which that phrase is understood in England. Both in Bengal and in Bombay the juries mentioned in them were identical in functions with the assessors of the present day, and it was expressly provided that the decision in all cases should be vested in the authority presiding in the Court, and should not depend upon the verdict of the jury. In Madras, it is true, a somewhat different course was tried in the first instance. Regulation X of 1827 enabled the Government of that Presidency, by an order in Council, "to authorize any Judge of Circuit, about to hold the quarterly or half-yearly jail deliveries, to cause juries to be assembled for the trial of all criminal cases that might be brought before him;" but the Judges so authorized were at liberty to try any particular case under the regulations previously in force, and not by a jury, recording their reasons in the calendar for the information of the *Faujdári Adálat*. The juries thus instituted were real juries in the English sense, and their verdicts had even more finality than is given to those of juries in the present day by the Code of 1882. But, as the words quoted above indicate, it was entirely optional with the Government and the Court to employ them or not. How far recourse was had to trial by jury in Madras while this optional system was in force, and with what success, we are not at present able to ascertain; but sixteen years later, when a new organization of Zillah Courts, Civil and Criminal, was introduced in that Presidency by Act VII of 1843, the system of employing assessors or jurors in sessions cases at the discretion of the Judge was, by section 32 of the Act, assimilated to that in force in Bombay and

Bengal. It was in that section provided "that the decision shall be passed by the Judge according to his own opinion, whether he agrees with the assessors or jury or not; but if he differs from the assessors or jury, his decision shall not be carried into effect unless confirmed by the Court of *Faujdári Adálat*, to which the case shall be immediately referred." In Madras, therefore, as elsewhere, there was after 1843, no difference between the so-called juries and assessors. Further, Your Lordship will see that the employment even of assessors was everywhere at the discretion of the Judge until the passing of the first Code of Criminal Procedure.

4. We have, in paragraph 3 of our Despatch of the 21st December, referred to what took place in 1884-85 when Lord Ripon's Government considered the possibility of extending the jury system in the several provinces of India. In Bombay the system was in those years extended, in respect of certain offences, to four districts, and to the important city of Karachi. It is now admitted by a majority of the Judges of the Bombay High Court, including Mr. Justice Telang, that a mistake was made in extending it to capital cases in three out of these four districts; and three Honourable Judges (including Mr. Justice Telang) concur in recommending the withdrawal from juries of capital cases in Ahmedabad (where these only are so triable), Surat and Belgaum. In the North-Western Provinces and Oudh the system of trial by jury was introduced in three districts out of 49, in a strictly limited class of cases; and, so limited, it has justified the foresight of the Government which introduced it by working with fair success. In Bengal, however, though the Lieutenant-Governor, Sir Rivers Thompson, had himself as a judicial officer had favourable experience of the working of juries, and though the Criminal Procedure Codes of 1872 and 1882 had introduced safeguards against wrong verdicts which were absent in 1861 when the system was first established, it was found impossible to give any extension to the area in which trial by jury was introduced in 1862. Considering that in 1884-85 both the Local and the Supreme Government were anxious to give every possible scope to the system, it appears to us that this fact affords the strongest demonstration that the experiment initiated twenty-two years before had not been a success. The causes of its failure were stated by the High Court in the terms quoted in paragraph 3 of our Despatch of December 21st, and are identical with those now alleged. As shown in paragraph 8 of the Despatch, these causes specially attach to particular classes of cases, which have now been removed by the Lieutenant-Governor's notification from the cognizance of juries; and we anticipate, as indicated in the same paragraph, that under the revised arrangements it may not be found impossible, as it was in 1884, to give some extension to the system in Bengal.

5. In paragraph 4 of the memorial the observation is made that the Law Officers of the Crown were not consulted in the course of our enquiry into the working of the jury system. We desire to point out that the question at issue was not one of legal interpretation, on which it is customary to seek the opinion of those advisers, but of general policy, to be determined by the experience of the Courts and officers who were acquainted with the working of trial by jury. In all cases we were careful to obtain the opinion of the High Courts, the Judges of which not only themselves have experience of the jury system, which obtains generally in trials before these Courts in Presidency towns, but are also charged with the duty of considering the verdicts of juries when referred by the Sessions Judges under section 307 of the Criminal Procedure Code. The general consensus of the opinions given by the Honourable Judges was the point in the case to which we attached the greatest weight. We cannot imagine authorities better qualified or less likely to be prejudiced, and we do not see what benefit would have been derived from taking counsel with our Law Officers in the matter.

We have discussed at length in our Despatch of the 21st December the various suggestions made for effecting improvements in the system of trial by jury; but we must observe that all these suggestions imply that the system as at present in force is in need not of extension but of further restrictions, and that our rejection of such restrictions, which is referred to in the memorial as a "conflict of opinion between the Governor General in Council and the Governments of Madras, Bombay and Bengal," shows that we desire as far as possible, to maintain the system as a reality, and not, by a series of checks and limitations, to reduce trial by jury to the level of trial with the aid of assessors. All the authorities without exception recognize the necessity of maintaining the existing safeguards against wrong verdicts, which the "repeated expressions of public opinion" referred to in paragraph 2 of the memorial (by which we understand the annual Resolutions of the "National Congress") have condemned, while the great majority advocate further measures in the same direction. An "improvement" which takes away the distinctive character of the institution would not, we imagine, meet the wishes of those who have signed the memorial; and short of making such "improvements" in the system we saw no course open but to follow the example of

those provinces where the jury system had proved successful, and restrict the cases triable by juries to those which juries have shown themselves competent to try.

6. The language used in paragraphs 5 and 6 of the memorial contains a charge against the Executive Government which is commented on with much force by the Lieutenant-Governor in paragraph 3 of his forwarding letter. We desire emphatically to endorse Sir Charles Elliott's observations on the suggestion made by the memorialists "that the only standard of excellence as Criminal Judges which will be accepted by the Government is a large percentage of convictions." We are satisfied that such a statement is absolutely without foundation, and that it is opposed both to the principles exemplified in the periodical reviews by Local Governments of the working of the Courts, and to the facts which appear in the published statistics. The latter show that Sessions Judges exercise the most absolute liberty of action in the cases which come before them for trial, and that they exercise it as freely in acquitting as in convicting the accused. We have never heard, and we do not believe, that any Provincial Government has ever made the proportion of convictions in his Court a test of the ability of a Sessions Judge. But we have frequently observed that the results in Sessions Courts have been commented on with approbation or the reverse in estimating the success of the police in the detection of crime, or the discretion of Magistrates in committing accused persons for trial. The memorialists appear to have overlooked this aspect of the matter, and to have treated as a condemnation of the Judge remarks which were really intended, and which very little reflection would have shown to be intended, as a criticism of the action of those departments—the Police and the Magistracy—for whose success in bringing evil-doers to justice the Government is specially responsible. The appellate system in force in this country provides, in our opinion, ample safeguards against wrong convictions and failures of justice in the Sessions Courts when juries are not employed; but only the criticism of their executive superiors can be relied on to control the action of the police in investigating criminal charges, or of Magistrates in preparing cases for trial before the Court of Session. In most cases an acquittal at the Sessions implies that a person presumably innocent has been subjected to harassment and distress without due cause; that a case has been investigated and placed before the Court in a slovenly and imperfect manner, and that the committing Magistrate was in error when he sent the accused for trial. We do not know how such defects in the administration of justice can be remedied except by duly noticing them when they occur, or how the success of a police can be estimated except by reference to the manner in which it detects crime and brings the offenders to punishment. The ideal of a successful police administration is that all complaints should be fully investigated, all false accusations against innocent persons exposed, the perpetrators of all crime found to have really occurred detected, and all persons arrested in cognizable cases placed before the Court which has to try them with the evidence so marshalled as to lead to the conviction of the guilty; and these are the points which necessarily elicit comment when the general results of Sessions trials come under review. It is scarcely necessary to say that no responsible Government in India can ever really desire that a person against whom an offence is not proved should be found guilty, or has used language which could, without distortion or wilful misinterpretation, be understood as implying such a desire. It has been our constant endeavour, and that of the several Local Governments, to improve the quality of the police and especially of the officers charged with the investigation of crime; and we need only refer Your Lordship in this connection to the recent correspondence on the subject, which shows that steps involving large additional expenditure, which we trust may prove effectual, have been taken or are under consideration in every province to reorganize the police force, and especially the superior officers, with the object of enlisting therein persons of better education and a greater sense of responsibility, who will be less likely to be guilty of the corrupt practices which are believed to have prevailed in the force as hitherto constituted.

7. In paragraph 7 the memorialists criticise the language used in our Circular to the Local Governments of the 31st May 1890, in which their opinion was invited on the merits of the jury system "as a means for the repression of crime." We need hardly point out that in employing this phrase we had in view the efficiency of the Courts where trial by jury prevails in bringing criminals to justice; Your Lordship will remember that our enquiry formed part of a general investigation into the causes which had led to an apparent increase of crime. It is the certainty, rather than the severity, of punishment which in our opinion tends to repress crime. There has always been, and there will probably always continue to be, great difference in the views taken by individual Judges as to the sentences appropriate to particular offences or offences committed under particular circumstances; but nothing can be more injurious to the

public security than the creation of an impression that a trial is a lottery in which the guilty person has an even chance of escape, or, what is still worse, that those who are charged by law with the duty of pronouncing upon his guilt or innocence are open to influences or prejudices which will lead them to acquit him even in the face of the clearest evidence. That such perverse verdicts do occur, and that not infrequently, is manifest from the papers submitted with our Despatch of the 21st December; and so far as they occur the jury system fails "as a means for the repression of crime," and tends rather, by defeating the operation of justice, to encourage and foster crime among those classes in whose cases perverse verdicts are most frequent.

8. The statistics appended to the memorial, which are taken from the annual administration reports, deal with all cases tried by jury, and do not distinguish those classes of offences in which the system has failed from those classes in which it has not been open to the same objection. The analysis of the figures under different heads, contained in the Bengal Government's letter No. 4627—J., dated the 12th December (enclosure No. 20 of our Despatch of the 21st idem), and summarized in paragraph 8 of our Despatch, shows that the small proportion of cases, when only the totals are taken into account, in which the verdicts of juries have been reversed or modified on reference to the High Court, is converted into a much larger proportion when only those cases are considered which have now been withdrawn from trial by jury. The proportion is specially large in murder cases, and we consider that there is no room for doubt that in these cases, both in Bengal and Bombay, the system has broken down and a change is imperatively called for. On this subject we have nothing to add to the remarks contained in paragraphs 7 and 8 of our Despatch of the 21st December.

9. While we are satisfied, for the reasons already stated, that the Lieutenant-Governor's order was one which he had full authority to pass, and good reasons for passing, we have asked him to consider, after obtaining statistics and making detailed enquiries, whether any of the offences withdrawn might not be restored to the cognizance of juries, and whether it is possible to introduce any amendment of the jury clauses of the Criminal Procedure Code, other than that which we have already recommended, with the object of diminishing the risks inseparable from this form of trial as at present in force.

Since the above paragraphs were written, we have received from His Honour a suggestion that if an enquiry is to be made into these points, it might be conveniently entrusted to a special Commission. Sir Charles Elliott's proposal, provided the scope of the enquiry is carefully defined, seems to us well worthy of consideration. We shall, however, take no further steps until we have heard from Your Lordship in reply to this and our former Despatch.

No. 147. From H. J. S. COTTON, Esq., C.S.I., Chief Secretary to the Government of Bengal, Judicial Department, to the Secretary to the Government of India, Home Department,—No. 35—J., dated the 2nd January 1893.

Some time ago the Lieutenant-Governor was unofficially asked to consider, after due enquiry, whether any of the offences withdrawn by the Notification of 20th October 1892 could be restored to the cognizance of juries either with or without a modification of the Code of Criminal Procedure. In reply to this request I am now to submit Sir Charles Elliott's opinion for submission to His Excellency the Governor General in Council.

2. It is difficult to say anything new on a subject on which so much able argument has already been expended. The Lieutenant-Governor, however, desires, as far as possible, to reconsider the question from the new light thrown on it by the fact that the distress and dissatisfaction caused by the partial removal of what is valued as an important privilege have been so great and so much beyond his expectation. He has earnestly endeavoured to discover what is the minimum of disturbance in the pre-existing arrangements which is absoluetly necessary to secure the due administration of justice. He notes that the Government of India have decided that the law shall be altered so as to allow the Sessions Judge, even after a general verdict, to require from the jury special verdicts on particular issues of fact. He also has studied the weighty arguments used in paragraph 16 of the Despatch of 21st December 1892, against the first three proposals contained in paragraph 15 of that Despatch. In spite of these arguments he is constrained respectfully to submit that in his opinion the adoption of at least the first two of those proposals is an essential condition, precedent to the restoration of any of the offences which he felt it his duty to withdraw from the operation of the jury system.

3. He recommends that section 307 of the Criminal Procedure Code should be modified in two ways, by making it compulsory on the Sessions Judge to refer a case in which he considers that a failure of justice will occur if the jury's verdict is accepted, and by indicating

more clearly the principles on which such a reference should be dealt with by the High Court. As regards the first alteration, he would advocate a return to the language used in the Code of 1872, substituting for the words "so completely that he considers it necessary for the ends of justice to submit the case to the High Court, he shall submit the case accordingly," the words "and considers it necessary for the ends of justice that he should do so, he shall not record judgment on that verdict, but shall submit the case to the High Court," the intention being, as stated by Sir James Stephen in his speech made when introducing the Bill of 1872, that he should exercise the power in question in those cases only in which it is necessary to do so in order to prevent a manifest failure of justice. As to the second, the Lieutenant-Governor does not at present see his way to suggesting any better form of words than that used by the Honourable Mr Justice Beverley, and quoted in paragraph 15 (2) of the Despatch already referred to.

4. If these two alterations are effected, or any modification of the existing law which will carry out their intention, Sir Charles Elliott thinks it would be possible to restore a large number of the offences excluded from jury trial by the October Notification. But, as at present advised, he would not feel justified, even with these improvements in the law, in allowing the offence of murder or culpable homicide to be tried in this way.

5. Other modifications which he would be glad to see carried into effect, though he does not think them absolutely essential, are those discussed in clause 3 of paragraph 15 and in paragraph 18 of the above quoted Despatch, *viz.*, the grant to Government of an appeal on the facts against a verdict of acquittal where the jury is not unanimous, unless the Judge records his agreement with the majority; and the reservation for special juries either of certain classes of offences or of any special offence about which the public opinion of the district is greatly excited and the Judge thinks it necessary to empanel a special jury. His Honour is not satisfied that the argument based on the paucity of qualified jurors is applicable to all the jury districts in Bengal, and would like to have the question further examined.

6. A suggestion has been made to the Lieutenant-Governor that a Commission might be appointed with instructions to consider such questions as those indicated above, and to report to Government on the feasibility of any scheme which would be generally acceptable, and yet would safeguard the Government from a recurrence of the scandalous verdict and grievous failures of justice to which attention has been drawn in the published correspondence. There are obvious difficulties attending the appointment of such a Commission, but it seems not impossible that it might result in the formulation of an authoritative report which the Government could accept, and if such a result could be obtained, it would be more satisfactory, and would tend more to reassure the public mind, than a decision arrived at by Government alone. The Lieutenant-Governor, therefore, thinks it his duty to submit this suggestion for the consideration of the Government of India, and to say that, should they accept it, nothing will be wanting on his part to afford the Commission such assistance as is in the power of the Bengal Government.

From the Government of India, Home Department, to the RIGHT HONOURABLE THE EARL of KIMBERLEY, K.G., Her Majesty's Secretary of State for India,—No. 3, dated the 18th January 1893. No. 148.

With reference to the concluding paragraph of our Despatch No. 1, dated the 4th instant, forwarding the memorial of a Public Meeting held at the Town Hall of Calcutta to discuss recent changes made by the Lieutenant-Governor in the jury system in the Lower Provinces of Bengal, we enclose a copy of a letter No. 35—J., dated the 2nd January, from the Government of Bengal, in which the suggestion is made that the question should be examined by a Special Commission.

This letter is that to which reference is made in our telegram to Your Lordship of the 16th instant.

From H. J. S. COTTON, Esq., C.S.I., Chief Secretary to the Government of Bengal, to the Secretary to the Government of India, Home Department,—No. 208—J., dated the 13th January 1893. No. 149.

In continuation of my letter No. 4723—J., dated 27th December 1892, I am directed to submit to the Government of India, for transmission to Her Majesty's Secretary of State, a copy of (1) a further memorial, with its covering letter, from Maharaja Durga Churn Law, C.I.E., dated 7th January 1893, and (2) a copy of appendices to, and corrections of, that memorial with a covering letter from the Maharaja, dated 10th January 1893, regarding the system of trial by jury in Bengal.

2. The Lieutenant-Governor apprehends that it will be considered unnecessary to discuss the arguments contained in the memorial, as they have been fully dealt with in the

various Despatches already recorded on the subject. He desires to confine his observations to paragraphs 17, 30, 31 and 32, and to comment at length upon paragraph 30 only, which directly impugns the conduct of this Administration in respect of the independence of judicial officers subordinate to the Government.

3. I am to point out that paragraph 17 is apparently based upon ignorance of the action which has already been taken by Sir Charles Elliott to improve the administration of justice in these Provinces. The Government of India are aware that proposals for the improvement of the police force in Bengal have been under the Lieutenant-Governor's most careful consideration, and have been submitted for the orders of the Supreme Government with the reports of two separate Committees which have been appointed to enquire into the subject. It is an essential part of these proposals that the investigation of cases shall be entrusted to higher and more responsible officers, who shall not ordinarily be below the rank of a Sub-Inspector. Arrangements have already been sanctioned by this Government for the proper conduct of prosecutions by Court Sub-Inspectors who have been relieved from clerical and other routine duties in order to devote their whole time to this special work. The improvement of the jury lists is the subject of the Circular issued by this Government, No. 917—J.-D., dated 24th October 1892, which forms one of the enclosures to the Despatch from the Government of India to the Secretary of State, No. 32, dated 21st December 1892, and the Lieutenant-Governor is now corresponding with the Sessions Judges of the jury districts in order to give immediate effect to further improvements. No pains have been spared by His Honour in dealing with the various reforms which are suggested by the memorialists in this paragraph.

4. In paragraph 30 of the memorial, it is stated that "the Local Government of Bengal requires judicial officers to submit returns of cases tried to itself, and thereafter passes Resolutions comparing the percentage of acquittals and convictions in certain cases, and pointing out that the percentage of acquittals is too large. In every Resolution regarding criminal justice there is a tabular form containing a column showing the percentage of convictions, and this is observed upon as it may appear to be high or low. Under this system and the instructions understood to be conveyed to them by His Honour the Lieutenant-Governor and the Commissioners of Divisions, judicial officers believe that their promotion, if not their livelihood, depends upon their showing a sufficiently high percentage of convictions, the result being that the percentages of convictions are being rapidly increased, and that the jails are being filled to a greater extent than before." The Lieutenant-Governor has repeatedly contradicted this insinuation that judicial officers are judged by the percentage of their convictions, and in emphatic terms has declared that their promotion is not in any way influenced or affected by such percentages. In a recent letter which I was directed to address to the High Court, a copy of which was submitted to the Government of India with my letter No. 598—J.D., dated 22nd September 1892, the Lieutenant-Governor observed:—

"As a matter of fact this test of the percentages of convictions was formerly applied to judge of the work of a judicial officer to an extent which has now fallen into desuetude. It was customary for the High Court to call for an explanation from a Magistrate when his percentage of convictions was below the standard level, though this practice has, it is believed, now ceased. Similarly, when the statements known as Q returns were submitted to Government, if they showed an excess of acquittals over convictions, it was usual to call for an explanation from the officers concerned; but this has not been done since the abolition of this return in April 1890. Far less importance is, therefore, attached to the mere statistical result of returns than was once the case; but at the same time the value of such percentages, as one of the tests of a Magistrate's work, is not disregarded and must always be recognized by Government. It is not true that the promotion of officers depends on their returns: but it is true that statistical returns are still, as they have always been, one of the means by which bad work can most easily be detected and brought to the notice of their higher authorities."

The Lieutenant-Governor's views are expressed in this extract and he has never published any Resolutions or passed orders which are not in accordance with the policy there enunciated.

5. The statistics of Criminal Justice are reviewed by the Government of Bengal on four separate occasions:—(1) in the Resolution on the Police Report of the Province, (2) in that on the report on the working of the Calcutta Police and of the Calcutta Police Magistrates, (3) in the remarks communicated to the Government of India on the Report of the High Court on Criminal Justice, and (4) in the series of Resolutions on the Annual Administration Reports of Commissioners of Divisions.

In dealing with these reports, it is possible for the reviewing authority to touch on the ratio of convictions to acquittals from three points of view: (1) as showing how far the police succeed in apprehending and prosecuting the right persons, (2) as showing the results of cases

tried and disposed of by magisterial officers, (3) as showing how far in their commitments to the Sessions Courts the judgment of the committing Magistrates has been confirmed by that of the Sessions Judge. The memorialists appear to have confounded all these classes together, but their charge could only be proved by bringing forward instances of the second class, where magisterial officers have been praised or blamed according as they reached a high or low percentage of convictions. The Lieutenant-Governor is satisfied that no such instance can be produced.

6. In the Resolution on the Annual Police Report for 1891, dated 14th September 1891, the Lieutenant-Governor expressly took exception to the practice of the Inspector-General of Police in commenting on and criticising judicial decisions, and directed that it should be stopped. Statistics are furnished in that Resolution according to the following tests, which have been long in force, and are prescribed by the Government of India for use in all Provinces:—

- (a1) the percentage of cases reported, which were investigated by the police;
- (a3) the percentage of police cases investigated, which ended in conviction;
- (a4) the percentage of police cases tried, which ended in conviction;
- (b3) the percentage of persons sent up for trial in police cases, who were convicted;
- (c2) the percentage of cases involving loss of property in which property was recovered.

These are established tests of police work and are current over the whole of India. The Resolution contains statistics of the percentages of convictions and acquittals in police cases tried during the year, and in only two cases is any inference drawn which can be held to comment on judicial decisions or the judicial administration of the Province. In paragraph 34, referring to minor offences against property, it is observed:—"Judicial results are bad, convictions resulting in 68 per cent. of cases decided, and 56 per cent. of persons tried being convicted. No great improvement in this respect can be expected until some satisfactory agency is organized for conducting prosecutions"; and again in paragraph 40:—"The Lieutenant-Governor regrets to notice one bad case reported by the Inspector-General, in which a Deputy Magistrate refused to allow time for the police to enquire into the antecedents of an offender in a trial before him, and thus sentenced to one month's imprisonment for theft a notorious Gonda Barwar with six previous convictions on record against him." The first of these remarks deals with the want of sagacity shown by the police; the second with a mistake in procedure by a Deputy Magistrate. Neither case supports the charge made by the memorialists, and neither can in any way be looked on as interfering with the independent administration of justice.

7. In the Resolution on the Calcutta Police Report for 1891, dated 17th June 1891, the percentage of acquittals and convictions in cases tried by the Presidency Magistrates is quoted in paragraph 14, and it is added:—"The Lieutenant-Governor has no desire to judge of the character of the work done merely by these proportions, but the figures would seem to show that more care is taken in sifting complaints in the Northern Division Court than in the others." In paragraph 16 it is observed that out of 21 persons committed to the Sessions by the Northern Division Court, "18 were convicted, 2 were awaiting trial at the end of the year, and only 1 was discharged—an extremely satisfactory result." In paragraph 17 it is said:—"In the cases of non-cognizable offences, the number of acquittals largely exceeded that of convictions. This would appear to indicate that sufficient care is not taken in examining complaints preliminary to the issue of process, and the Lieutenant-Governor trusts that if there has been any such want of care, it may be avoided in future." There are no other remarks in this Resolution bearing on the subject. The second passage refers to the discretion shown by Magistrates in committing cases to the Sessions. In the other two the objection taken by Government was to the indiscriminate admission of complaints and unnecessary hauling up of innocent persons before the Courts; not to their acquittal when it was shown that they had been improperly summoned.

8. The observations contained in the letter from this Government to the Government of India, dated 8th February 1892, on the High Court's Report on the Administration of Criminal Justice for 1890, have not been published, and could not be referred to by the memorialists, but they are of a perfectly colourless character, and merely record the fact, without any comment thereon, that the proportion of convictions to persons tried was slightly higher than in the previous year.

9. The Resolutions on the Commissioners' Annual Administration Reports contain this year for the first time a statistical table of criminal cases disposed of by Magistrates, with a column showing percentage of convictions, and also a table showing the number of Sessions trials in each district and how the commitments eventuated. It is probable that it is to these

Resolutions that the memorialists refer. The Lieutenant-Governor has, therefore, directed me to extract in this letter all the observations contained in these Resolutions which directly or indirectly bear on the subject now under discussion. In the Chittagong Resolution, dated 2nd October 1892, there is nothing. In the Burdwan Resolution, dated 4th October, there is nothing. In the Chota Nagpur Resolution, dated 10th October, the following remarks occur:—"Mr. Wace remarks in this connection that it is noticeable that those officers who were most dilatory have also a large proportion of acquittals against them. This is exactly what is to be expected. If cases are allowed to drag on wearily and witnesses to be tired out by constant attendances, it is a mere certainty that the disposal of justice will suffer." In the Orissa Resolution, dated 13th October, it is stated with reference to the statistical result of Sessions trials:—"These figures are unusually good, especially in Cuttack." In the Patna Resolution, dated 19th October, it is observed with reference to the work of Magistrates:—"The percentage of convictions increased slightly from 62·8 to 63·1 per cent." With regard to this the Commissioner reports as follows:—"The good result in the districts noted above was partly due to the exercise of better supervision by District Officers over the proceedings of Subordinate Magistrates, and partly to the large increase of nuisance and municipal cases which generally end in convictions." With reference to Sessions statistics it is said:—"The percentage of cases in which convictions were obtained was 66·6, a very fair result; pointing to careful enquiry and commitment on the part of Magistrates. The proportion was worst in Gya." In the Bhagalpur Resolution, dated 8th November, the Lieutenant-Governor wrote with reference to the statistical result of Sessions trials:—"The rate of convictions (75 per cent.) is good and shows care in the preliminary investigations." In the Rajshahi Resolution dated 15th November, the following remarks are recorded:—"With regard to the work done by Deputy Magistrates, the Commissioner finds that they often prefer to dismiss a case at once rather than supply missing links in the evidence. They do not investigate, but simply listen to the evidence put before them. Nothing is more common than for the Court to discharge a warrant case because the police have not sent up a witness supposed to be material, ignoring the fact that, under section 252 of the Criminal Procedure Code, it is the Magistrate himself who has to ascertain the persons likely to be able to give evidence, and that he is bound to summon them. Thus, many persons who would, on proper enquiry, be convicted are allowed to escape, because the Magistrates will not discharge the duties imposed on them by law. They prefer to consider themselves Judges, and to assign to the police the functions of committing Magistrates." And, again, with reference to Sessions statistics:—"The inaccuracy of the statement renders it impossible to work out the usual ratios of success." In the Dacca Resolution, dated 29th November, it is merely observed, with regard to the work of Magistrates, that "the percentage of persons convicted to persons acquitted ranges from 81 per cent. at Dacca to 52 per cent. at Mymensingh, the average for the division being 65 per cent;" and in regard to the work of the Sessions Courts: "the lowest percentage of convictions was in Mymensingh, and the highest in Dacca and Backergunge, both of which were above 70 per cent." Lastly, in the Resolution on the Report of the Presidency Division, dated 6th December, it is said in regard to Magistrates:—"The percentage of persons convicted to persons disposed of was 70 for the whole division, the highest percentage occurring at Barrackpore and Sealdah, and the lowest at Bangaon, Jessore, Jhenidah, Khulna, and Magura;" and in regard to Sessions Courts:—"The general ratio of success to commitments was 60 per cent.; it exceeded 80 per cent. in Nadia and 70 per cent. in Jessore and Khulna, but fell to just over 50 per cent. in the 24-Parganas. The Commissioner's report gives no indication of the causes of these varying degrees of success." Thus it appears that in no single case was a word of praise or censure based on the statistics of magisterial convictions. On the other hand, success in commitments is mentioned as praiseworthy and desirable. The remarks on this subject in paragraph 6 of the Government of India's Despatch No. 1, dated 4th January 1893, are so exhaustive that Sir Charles Elliott feels himself absolved from any further comment on the subject.

10. It is proverbially hard to prove a negative when the assertion to be disproved is so indefinite, but the Lieutenant-Governor believes that in the above extract he has quoted all the observations in the published Resolutions of the past year, which could by any exercise of ingenuity be interpreted as calling on the magistracy for more convictions, or as showing any desire for convictions on the part of Government. It will be seen that no charge could have been brought against this Government which has less foundation in fact, or which rests upon a more slender and unsubstantial basis; and Sir Charles Elliott trusts that both the Government of India and the Secretary of State will be fully satisfied from these quotations, as well as from the general tenor of His Honour's administration, that there is no ground whatever for the imputation which the memorialists have thought fit to make. There is no warrant for the statement that the judicial officers under this Government have any reason for believing, from

anything which has been said or done by the Lieutenant-Governor, that their promotion, if not their livelihood, depends upon their showing a sufficiently high percentage of convictions, and His Honour can only say that if such an impression has gone abroad, it is a misconception which should be authoritatively and emphatically contradicted wherever it may exist.

11. The same lack of intelligence in the use and application of statistics is shown in paragraphs 20, 21, 24 and 25 of the memorial, where the ratio of jury-verdicts upset by the High Court is compared with the ratio of decisions by Judges sitting with assessors similarly upset. The two sets of figures are incomparable, because the High Co rt approaches these two classes of cases in a totally different spirit, requiring in the one case to be absolutely convinced that the jury could not possibly be right, and in the other case to be equally convinced that the accused could not possibly be innocent. Still less force is there in the argument drawn from a comparison of the number of jury-verdicts upset with the number of the population. It is not so much the actual number of such cases, as their importance and celebrity, which makes the miscarriage of justice a blow to the public conscience and an evil influence in forming the public character.

12. As to the assertion in paragraph 22 that only one case is known in which a Brahmin was capitally sentenced after being acquitted by a jury, I am to draw attention to the two cases in which Brahmins were concerned, mentioned in the letters quoted in the margin, which were attached to Sir John Edgar's report of 22nd June 1891.

Letter from Mr. Cooke, Magistrate of Hooghly, dated 9th-11th August 1890, paragraph 20.
Letter from Mr. Beighton, Judge of Dacca, dated 16th January 1891, paragraph 3.

13. Paragraph 31 of the memorial relates to the Sham Bazar rioting case. The facts of this case and the grounds for the Lieutenant-Governor's opinion have been fully submitted to the Government of India in my letter No. 4675—J., dated 21st December 1891.

14. With reference to paragraph 32 of the memorial, I am to say that the minute of the Lieutenant-Governor from which an extract is there quoted was never published, and that it was only a minute of inspection recorded for the guidance of the district officials. His Honour is surprised at the use which has been made in a public memorial of a stolen document, the misappropriation and publication of which might be considered an offence under the Official Secrets Act. There was, however, nothing really confidential in the minute, nor are the remarks quoted open to any criticism of the kind implied by the memorialists. It is a truism to say that when a riot occurs with plunder and arson, justice requires that the guilty person should be punished. Nothing but dull malignity could read into the remark which has been quoted the meaning that some one should be punished, whether guilty or not.

From Maharaja Doorga Churn Law, C. I. E., Chairman of the Committee, to the Chief Secretary to the Government of Bengal,—dated the 7th January 1893. No. 150.

I have the honour to forward a memorial of the Committee appointed at the public Meeting held in the Town Hall on the 20th December last, addressed to Her Majesty's Secretary of State for India in Council, and to request that the Government of Bengal will be good enough to forward it to the Government of India, with a request that the Government of India will be pleased to forward it to Her Majesty's Secretary of State for India in Council.

To Her Majesty's Secretary of State for India in Council. No. 151

The humble Memorial of the Committee appointed by the inhabitants of Calcutta and its Suburbs in Public Meeting assembled on the 20th December 1892.

Most Respectfully Sheweth,—

That your memorialists have been furnished with a copy of the Despatch No. 32, of 1892, of the Government of India to Your Lordship in Council, dated Calcutta, the 21st December 1892, which was the day following the Public Meeting.

2. That inasmuch as the Despatch purports to set out the reasons of the Government of India for supporting the action of the Government of Bengal in issuing the notification, your memorialists desire to point out the grounds upon which they have come to the conclusion that the Despatch not only fails to show any justification for the notification, but does, on the contrary, show that the notification ought never to have been issued, and ought to

have been withdrawn as soon as the statistics furnished by the Government of Bengal to the Government of India on the 12th December 1892 had been seen and considered.

3. That the Despatch consists of 20 paragraphs, with most of which your memorialists do not think it necessary to deal in any detail.

4. That the first paragraph is introductory.

5. That the second paragraph states that the Codes of Criminal Procedure of 1861, 1872, 1882, authorized the Local Government to direct that the trial of all offences, or of any particular class of offences, should be by jury in any district, and also to revoke or alter any such order from time to time as might be necessary, and shows how far the system was established in various parts of India and how far it now prevails.

6. That your memorialists respectfully contend that the Government of Bengal was not authorized to issue a notification of such a sweeping character, and that the intention of the Legislature was only to authorize the Local Government to act in case of necessity being shown in respect of any particular district. This is very clearly put by the Government of Bombay when they say: "Where, however, the jury system exists, it ought not, in the opinion of the Governor in Council, to be abolished, except on clear proof, for the particular Sessions Division, of flagrant abuse or failure."

7. That the third paragraph shews that in 1884 the Government of Lord Ripon considered the advisability of urging the Provincial Governments to take more general action under the powers enabling them to extend the system of jury trials in Sessions Courts, and refers to papers not accessible to the general public, for the reasons upon which it was decided that it was not expedient to take any steps in that direction. Your memorialists regret that the Government of India have not thought fit to publish the papers therein referred to, for they take it that there must have been a very great preponderance of opinion in favour of the system, however the particular extension then proposed may have fallen through. It is well known that Sir Cecil Beadon, Sir George Campbell, Sir Richard Temple, and Sir Rivers Thompson, who were all Lieutenant-Governors of Bengal during the period referred to (Sir Rivers Thompson being the Lieutenant-Governor in 1884), were strongly in favour of the system, and Sir Cecil Beadon and Sir Rivers Thompson were in favour of its extension. Your memorialists are not aware whether the extension of the system was considered by other Lieutenant-Governors.

8. That the fourth paragraph states that in 1888 the attention of the Government of India was drawn to the opinions expressed in some of the Provincial Reports on the administration of the Police and Criminal Justice; that there had been a considerable increase of crime of late years, and sets out the steps which were thereupon taken, and the institution of the proceedings which led up to the issuing of the notification. If it is intended by this to suggest that any such increase of crime was due to the greater chances of acquittal owing to the jury system, your memorialists protest against the suggestion as absolutely baseless and unsupported by statistics or the opinions of judicial or even executive officers. It seems to your memorialists more important to observe, as to the increase or decrease of crime, so far as it may be relevant, that upon the statistics furnished by the Government of Bengal on the working of the jury system in the jury districts of Bengal there has been a considerable decrease in the total number of cases brought to trial in the years 1889, 1890, 1891, as compared with the years 1887, 1888. The cases under section 302 (murder) numbered in 1887—58; in 1888—31; in 1889—35; showing a marked decrease. In 1890 they rose to 42, and in 1891 they declined to 37, giving an average of 40 per annum during the whole of those five years and an average of 36·25 during the four later years.

9. That in the fifth paragraph two points of view are set out from which the results of the working of the jury system have to be considered, namely, (1) with reference to the localities and classes of offences to which the system has from time to time been applied, and (2) with reference to the restrictions which have been imposed and the further restrictions proposed. It seems to your memorialists that a broader and wider view should be taken from at least three more important points which, as it seems to them, have been overlooked both by the Government of India and the Government of Bengal, namely, (1) with reference to the political aspect of the question; (2) with reference to the fact that the system in its present form was granted by the British Government as a boon to this country, which has always been, and is, most highly valued as a safeguard of the lives and liberties of the people; (3) with reference to the fact that, as your memorialists humbly submit, no action by an order in the Official Gazette ought to be taken by the Local Government, and no such action ought to be sanctioned by the Supreme Government without previous publication, so that there might be an opportunity for the expression of public opinion, and that any such action is directly

contrary to, and a distinct violation of, the Resolution of the Government of India, dated November 8th, 1882. With regard to the political aspect, your memorialists would refer to the following expression of opinion by the Government of Bombay:—"In this country the jury system is looked on with considerable pride by the pretty large class, whose idea of progress consists in the imitation of English institutions. The more interested they thus become in the jury system the better on the whole will it work in their hands or with their aid. They certainly would resent its extinction, and their reclamations would find echoes elsewhere. Again, the use of juries, when fairly good juries can be had, possesses some undoubted advantages. It prevents the main principles of justice and legal reasoning from being hidden away in technicalities. Everything laid before a jury has to receive popular exposition, and be submitted to common sense tests. The jurymen receive and carry away a true idea of legal principles. They learn that the judges are acute, wise, and impartial, and see how really difficult a task adjudication is. They diffuse these experiences and the consequent regard for law and the judicial administration throughout society. Culprits, again, who are condemned on the verdict of a jury, can never say that they have been sacrificed to official animosity or prejudice. The jury form a group always ready to contradict any such assertion. It appears to the Governor in Council that it is a distinct benefit to have the odium of apparently harsh decisions thus taken off the shoulders of the official class."

10. That the sixth paragraph deals with the Presidency of Madras and the seventh with the Presidency of Bombay, but in both cases the conditions are widely different from those in Bengal, and in particular it does not appear that the police, in either of those two Presidencies, are in the habit of instituting false cases and suborning false evidence in true cases in the way that they do in Bengal.

11. That the eighth paragraph deals with Bengal and Assam together, and as to Bengal, states the step taken to introduce the jury system, and relies on the reports and opinions forming annexures Nos. 6, 7 and 8 to the Despatch to shew that the jury system has worked in an extremely unsatisfactory manner in the Lower Provinces, and that flagrant miscarriages of justice are of not uncommon occurrence in important classes of cases, but no other ground for the statement is here given beyond these reports and opinions. The notification is referred to incidentally as follows:—"Very recently the Bengal Government, acting under the powers conferred by section 269 of the Criminal Procedure Code, has revised the list of offences triable by jury;" and then the changes are stated. Then follows:—"These changes have been made with a view to the improvement of the jury system by withdrawing from its application those offences which experience has shown to be unsuitable for trial by jury, and the trial of which has brought most discredit on the system in Bengal." Your memorialists are at a loss to understand how such a wholesale withdrawal can be termed an improvement of the system, and it seems to your memorialists, and to the country, to be nothing less than the abolition of the system in all the most important cases.

12. That in the same paragraph reference is made to the letter of the Bengal Government, No. 4527—J., dated 12th December 1892, and its enclosures, which exhibit in a tabular form some statistics of the results of jury trial during the past five years in the districts where it is in force. These statistics, which your memorialists will deal with later on, do not appear to have been before the Government of India until this date, long after the issue of the notification, and presumably they were only formulated by the Government of Bengal after public excitement had been aroused by the notification which was dated the 20th October 1892.

13. That paragraph 9 deals with the North-Western Provinces and Oudh, and here, though the population is not so advanced or so educated as in Bengal, the system appears to have worked satisfactorily. The concluding sentence of this paragraph of the Despatch—"the opinion of the Local Government is that restricted in this manner the jury system has on the whole worked satisfactorily in the three districts where it prevails"—does not fully or adequately express the view of that Government, for we find that they say, amongst other things "as a means for the repression of crime its principal and perhaps sole advantage over trial by assessors is that jurors, if the lists are carefully prepared, are generally men of somewhat better status and intelligence." "On the whole, the result of its trial during the past five years seems to be that the system has worked fairly well, and the figures show that the percentage of verdicts disapproved of is considerably less than in the case of trial by assessors." "In 1886 the late Mr. McConaghey, whose experience both as Sessions Judge at Lucknow and as Inspector-General of Police is of exceptional value, observed:—"The jury system on the whole has been a success, and the verdicts given have been honestly and thoughtfully worked out."

14. That paragraph 1 sets out certain general conclusions to the effect that the system of trial by jury is not an established part of the machinery of justice in this country, but an exceptional procedure, and refers to the reports and opinions abovementioned as showing that, in certain classes of cases, juries in India have been found to be devoid of a due sense of their responsibility and public duty, and that such cases should be excluded from trial by jury. The Government of India desires to assimilate the system in other places to that prevailing in the North-West Provinces and Oudh, which excludes murder, culpable homicide, and rioting—the two former on the ground of personal feelings and prejudices, the latter as being too difficult for a jury to try. This paragraph also your memorialists propose to deal with later on.

15. That in the eleventh paragraph the Despatch turns to the restrictions and checks at present existing, and proposed for adoption, and paragraphs 12 and 13 are also taken up with this subject, which your memorialists do not think necessary to discuss at the present time.

16. That the fourteenth paragraph points out that though formerly the High Court was unwilling to interfere with the verdicts of juries, except in certain cases, it has now adopted a view approved of by the Government of India.

17. That the fifteenth paragraph deals with various reforms that have been suggested, but your memorialists regret that they do not find amongst them any of the following:—

(1) The improvement of the Police force.

(2) Provision that the investigation of cases and the production of evidence shall be the work only of the higher and more responsible Police Officers not below a certain grade.

(3) Provision for the proper conduct of prosecutions by adequately paid and competent persons.

(4) Provision for the preparation by competent persons of proper and complete lists of jurors, a matter which is touched on in the eighteenth paragraph of the Despatch.

(5) Provision that the duties of jurors should be rendered as little irksome as possible, which was pointed out by the Government to be a duty so far back as 1855.

With regard to 4 and 5, your memorialists crave leave to refer to the report of Mr. Crawford, the Judge of Hooghly, in annexure No. 6 to the Despatch.

17. That paragraph 16 returns to the consideration of restrictions, and paragraph 17 states the conclusion that it is necessary that the jury system should be reformed and given a fresh trial on the lines stated in paragraph 10, and suggests, in that case, a possibility of further extension. That paragraph considers and condemns the suggestion of special juries, though the fact that a sufficient number of persons could probably be found for this purpose, who do not serve at all at present, appears to have been completely lost sight of.

18. That paragraph 19 suggests the possibility of an appeal on facts becoming ultimately necessary, and paragraph 20 pronounces that it will be unnecessary for the Supreme Government to reserve a control in case the Local Governments agree to follow analogous principles in selecting the classes of offences which should be tried by jury, that is, as your memorialists understand, agree to take the North-Western Provinces as their model which the Bombay Government is clearly not prepared to do.

19. That your memorialists have now referred to all the different paragraphs in the Despatch, and it does not appear that any particular stress is laid upon the reports and opinions furnished by the Bengal Government, or, indeed, the other Governments consulted. Such a step as the issue of the notification, in the absence of urgent political necessity, could only have been justified by showing from statistics a general failure of justice. Political considerations appear to have been entirely lost sight of, and as to any failure of justice, the only real attempt to show anything of the kind is by the figures furnished by the Government of Bengal to the Government of India on the 12th December 1892. It is by these statistics that the sweeping assertions in paragraphs 8 and 10 must be substantiated, if it is at all possible to do so, but all that is found is a general reference to the reports and opinions furnished by the Bengal Government in support of the assertions in paragraph 10. Your memorialists are content to pass over these reports and opinions with the observations that they were called for, not u on the question whether such action should be taken as was taken by the issue of the notification, but upon wholly different questions, the attention of those who were applied to being mainly directed to the question of what amendments they could suggest in the system of trial by jury, not to the question whether it should be in whole or in part abolished. Further, your memorialists would point out that in those reports and

opinions there is a great deal to show that no such action, as has been taken by the notification, ought to have been taken, and very little to show that the system ought to be abolished or curtailed, and that what there is, is chiefly based upon a general impression that trial by jury has no merits, and that in England the people are prepared to abandon it as an anachronism and a system that has passed its appointed time. Again, the Despatch examines in considerable detail the various restrictions that have at various times been imposed upon the system of trial by jury in order to prevent any miscarriage of justice, and your memorialists desire to bring it prominently to Your Lordship's notice that, since it is clearly shown that the Judges have, under section 307, the fullest power of referring, and are bound to refer cases to the High Court, whenever they disagree with the verdict of the jury and think it necessary in the interests of justice so to do, and since the High Court have full power to deal with the cases that are so referred, the responsibility for any failure of justice must rest with the Judge or the High Court and not with the jury.

20. That proceeding now to the statistics in paragraph 8, which, as has been already pointed out, appear to have been obtained only after the issue of the notification, these statistics show that of the cases, formerly triable by jury, but now withdrawn from their cognizance, the High Court interfered in a number representing 4·8 per cent. only, and of the cases which still remain triable by jury the High Court interfered in the proportion of 1·6 per cent., and that in murder cases the High Court interfered in 6·4 per cent. There appears to be a desire to add to these figures those of the cases where the Judge disagreed with the jury and referred the case, for those figures are prominently stated, but your memorialists respectfully insist that those cases merely show a difference of opinion between the Judge on the one hand, and the High Court and the jury on the other, and it cannot possibly be assumed that the Judge was right and the High Court and the jury were wrong. That even taking 6·4 per cent. as the proportion of wrong verdicts in murder cases, and assuming that in these cases there had resulted a failure of justice, that would surely not have been a sufficient reason for condemning the system; and your memorialists respectfully contend that such a result would compare favourably with the result of any other form of trial and with the result of trial by jury in England. In fact, however, owing to the action of section 307, there was no failure of justice in any of these cases, for the High Court corrected the decisions in all of them.

21. That your memorialists further desire to point out that the total number of verdicts of juries in murder cases, which have had to be corrected by the High Court, is only 13 in five years, or less than an average of three each year. The population of the eight districts in Bengal, where the system of trial by jury prevailed, was, according to both the census of 1881 and the census of 1891, over 12 millions. It therefore appears that in these districts verdicts of juries in murder cases had to be corrected in a proportion of less than 1·08 to every million of the population in a period of five years. The area of these districts is over 16·300 square miles, and it consequently follows that one verdict of a jury only would have to be corrected in an area of over 6,250 square miles annually.

22. That it is stated in the same paragaraph that the cases in which perverse verdicts are returned are usually those in which a person of respectable caste or station is involved, and these necessarily form but a small proportion of the whole. There are, however, no returns on this subject, and Your Lordship in Council has no materials for verifying these statements as to each particular case, but from what your memorialits do know and have been able to ascertain, the cases corrected by the High Court have been almost entirely cases in which the prisoners were persons of low caste and humble station. Your memorialists have only been able to discover one case in which a Brahmin has been capitally sentenced by the High Court after having been acquitted by the verdict of the jury, and in that case the foreman of the jury was a Mahomedan, while Brahmins have repeatedly been convicted even of murder by juries. Your memorialists could point to many such cases, and the Government of Bengal can no doubt furnish a complete list from the statistics at their command. Your memorialists can even point to two cases in which Brahmins have been convicted of murder by juries and the verdicts were set aside by the High Court.

23. That the statement in the same paragraph that where the landless labourer or low caste aboriginal is concerned, the cases are usually easy of decision, is somewhat remarkable. Your memorialist would point out that it is perhaps easier for a detective agency to discover the perpetrator of a crime, if it be committed by a person of humble station than if it be committed by a person of respectable position, owing to the former having a less amount of intelligence to enable him to guard against detection, and that it is certainly easier and safer to accuse a person of humble station, if the real culprit is not to be found, but that when the

case comes to trial the conditions are reversed. In the case of a landless labourer or low caste aboriginal, the witnesses are generally of the same class, and are so confused and lacking in intelligence, that they cannot give a connected or consistent account of the occurrence, and consequently it is extremely difficult to prove the case satisfactorily. In the case of a person of respectable station there is, in this respect, less difficulty. The only ground for the statement is that, in the one case, the accused can obtain efficient legal assistance in his defence, while in the other he cannot do so, and that, in consequence, if the Judge considers that there ought to be a conviction, it is much easier to bring this about in the one case than in the other. Your memorialists consequently venture to think this statement will not carry much weight with Your Lordship in Council.

24. That your memorialists believe that if the statistics of trials before Judges and assessors are examined, it will appear that the average number of cases where the decisions are reversed by the High Court will amount to over 13 per cent., that is, more than double the percentage of murder cases that has been tried by a jury, and then reversed by the High court.

25. That the cases where trials by a Judge and assessors, in which error is detected, are chiefly judgments of conviction, while in the 6·4 per cent. of murder cases reversed the judgments were chiefly of acquittal. Your memorialists venture to think that it is wholly contrary to all principles of justice to replace a system under which there are a number of wrong verdicts of acquittal by a system which produces a double proportion of wrong verdicts of conviction, and that any such proposal, however attractive to certain persons, is one that is full of the greatest danger to the public.

26. That your memorialists venture to assert that the reason for any unsatisfactory working of the jury system is to be found in the evils which require to be reformed, as pointed out above in the seventeenth paragraph. Many of the persons best qualified to serve, owing to the present irksomeness, discomfort and inconvenience of serving, avoid service, which, under the present conditions, any person of position or wealth has no difficulty in doing, by procuring the omission of his name from the list of jurors, and as shown by the report of Mr. Crawford amongst others, the jury lists are susceptible of very great improvement. If the preparation of these lists was entrusted to competent persons, and there was no possibility of procuring exemption from service except on substantial grounds, your memorialists cannot but think that the system could be so improved as to work even more satisfactorily than it does at present.

27. That, as your memorialists consider, it is absolutely essential that the Government of the country should command the esteem and respect of the people. The respect of the people for the Government of the country can hardly be increased by the withdrawal of an important and cherished privilege upon five days' notice only and without any opportunity being given for expressions of opinion by the people on the subject, the ground for this course of action being the hope that the people may, after the step has been taken, acquiesce in what they would have vigorously protested against had they known that such a step was contemplated.

28. That the importance attached to the system of trial by jury by the people is conclusively shown by the large and enthusiastic meetings that have been spontaneously held in Bengal to protest against the notification immediately upon its appeaarnce.

29. That one of the reasons which have induced the inhabitants of Bengal to attach so much importance to the possession of the privilege, is that it is notorious that the Police of Bengal are regarded with grave distrust by the people, and that there are good grounds for this distrust, as we pointed out in the report of Mr. Matthews, the Judge of Burdwan.

30. That the people at large look upon trial by jury and the High Court as the only two safeguards for their lives and liberties and their only protection against the despotic and arbitrary power in the hands of the executive, and view with intense alarm the continual attempts by the Executive Government to supervise, interfere with, and control the action of judicial officers. Your memorialists would point out that under section 15 of the Letters Patent constituting the High Court, the supervision of the administration of justice is entrusted to the High Court, yet, as is stated in paragraph 4 of the Despatch, the steps which led up to the notification were taken not upon representations by the High Court, nor upon complaints by the people at large, or even individually, but upon the Provincial Reports on the administration of the Police and Criminal Justice. The Local Government of Bengal requires judicial officers to submit returns of cases tried to itself, and thereafter passes Resolutions comparing the percentages of acquittals and convictions in certain cases, and pointing out that the percentage of acquittals is too large. In every Resolution regarding Criminal Justice there is a tabular form containing a column showing the percentage of convictions, and this is observed upon as it may appear to be high or low. Under this system, and the instructions,

understood to be conveyed to them by His Honour the Lieutenant-Governor and the Commissioners of Districts, judicial officers believe that their promotion, if not their livelihood, depends upon their showing a sufficiently high percentage of convictions, the result being that the percentages of convictions are being rapidly increased and the jails are being filled to a greater extent than before.

31. That your memorialists, in this connection, would desire to observe upon the allusions, in paragraph 14 of the Despatch, to the alleged notorious failure of justice in what is known as the Sham Bazar Riot Case, and the way in which the Local Government has taken upon itself to reprimand a high judicial officer, a step which cannot fail to exercise a marked effect on the mind of that officer and of other judicial officers. In that particular case, it will be found that the acquittals were due to the untrustworthy nature of the police evidence, that the Judge left it to the jury to acquit the prisoners if they considered that the contradictions in the police evidence caused them to distrust it generally, that in the opinion of persons who watched the trial and are competent to judge, the jury could not properly have convicted owing to the contradictory evidence given by the police, and further that counsel employed by the Government to conduct the prosecution did not think fit to apply to the Court to refer the case.

32. That your memorialists further desire to bring forward another remarkable instance of such interference. After a Magistrate had acquitted 101 persons recently accused of rioting at Purulia, the Lieutenant-Governor made these remarks in a minute which was circulated with reference to the case :—" This was a remarkable case—a row in a bazar with plundering of shops and burning of thatch, and it illustrates what seems to be a defect in the Magistrate's character, his persistent dislike and distrust of the police. That the riot had occurred was undoubted, and it was so sudden, and the chief offender ran off so quickly before the police were on the spot, that there was great difficulty in identifying any one. The police arrested people indiscriminately, and the Magistrate seemed to take pleasure in pointing out their shortcomings in sarcastic language, but he did nothing to help them or instruct them, and did not seem at all impressed with the feeling that some one ought to be punished for the day's work." The effect of these remarks does not require to be discussed by your memorialists. Much of the criticism of the jury system by the Bengal Government is based on the reports of the Police Officers who, having failed to secure convictions, endeavour to throw the blame of their failures either on the Judges who are able to defend themselves, or, in preference, on the juries who cannot do so.

33. That it is suggested in the Despatch that juries are unfitted to estimate the various details of the evidence in cases of riots, but it frequently happens that, where a true case of a riot attended with homicide occurs, the complainants seize the opportunity of implicating persons who were not present as well as the actual participators, and they are generally all charged with murder. The people of Bengal rightly consider that the system of trial by jury is far superior to any other as a protection against such dangers. At a time when steps are being taken to introduce, to some extent, representative institutions, it is surely possible to obtain juries of sufficient intelligence to try these cases in a manner to satisfy not merely the people at large who are satisfied already, but the Government, if proper care is taken in the preparation of the jury list.

34. Your memorialists trust that this memorial will be of some assistance to Your Lordship in Council in considering this important matter, and that Your Lordship in Council will determine that the issuing of the notification was an act which ought never to have been done in the first instance; that such action ought not to have been supported by the Government of India; that the people of Bengal in no way acquiesce in the loss of this privilege, but are growing daily more and more exercised in their minds and alarmed ; and that immediate steps should be taken to allay public feeling and grant the people of Bengal a redress of this grievance.

Your memorialists therefore humbly pray that this memorial may be taken as supplemental to the memorial of the inhabitants of Calcutta, and that Your Lordship will take such steps as may be necessary to bring about the withdrawal of the notification, the complete restoration of the system of trial by jury to those parts of Bengal where it has been in force, and its extension to those parts of the Presidency which are fit to receive the privilege.

From Maharaja DOORGA CHURN LAW, C.I.E., Chairman of the Committee, to the Chief Secretary to the Government of Bengal,—dated the 10th January 1893. No. 152.

I had the honour to submit, on the 7th instant through you, to be forwarded to Her Majesty's Secretary of State for India in Council, a further memorial of the Committee appointed at the Public Meeting held on 20th December. I have now, on behalf of the Committee, to submit appendices to, and corrections of, that memorial, and to solicit the favour of their being forwarded through the usual channel to Her Majesty's Secretary of State for India in Council as part of the memorial and to be read therewith.

APPENDIX A.

Extract from the Proceedings of a Meeting of the Legislative Council, held on the 15th of December, and published in the "Gazette of India", *dated the 23rd December 1882.* No. 153.

"There was a good deal of legislation which affected the interests of the public as intimately as—he (the Law Member) was inclined to think, even more intimately than—the Acts either of the Governor General in Council or of the local legislatures. What he referred to were the numerous notifications, rules and regulations which were made from time to time either under executive authority, or under the authority of a particular Act. The existing practice with reference to these rules was that, when they were made, they were published in the local official Gazette or in the *Gazette of India*, as the case might be. It appeared to the Government of India, that in the case of legislation of this kind,—for it was legislation,—it was as important as in the case of Bills that opportunity should be given for external unofficial criticism before the rules had been finally settled. *The Government had accordingly recommended that any rule, regulation or notification, which affected the outside public, whether made under executive authority or on the authority of an Act, should, before being issued by the Local Government or Administration, and where sanction was required before being submitted for the sanction of the Governor General in Council, be published as a draft, with a view of ascertaining whether any valid objection could be taken to it.*"

APPENDIX B.

No. 154.

Some cases, in which Brahmins have been convicted by Juries mostly composed of Hindus.

N. B.—Sessions cases in which accused are Brahmins are, it is well known, comparatively rare.

This list includes only such cases as have been discovered on reference to the Law Reports and newspapers.

From 1862 to 1872.

1. Sitanath Ghosal—Convicted by a jury at 24-Pargannas of perjury. Reported in 2 W. R., 60. Verdict affirmed on appeal.
2. Rookini Kant Mazumdar—Convicted by a jury at Murshidabad of perjury. Verdict affirmed on appeal. 3 W. R., 58.
3. Sital Chunder Bagchi—Convicted by a jury in Assam of attempting to receive a bribe. Conviction quashed by the High Court. 3 W. R., 69.
4. Dina Nath Ganguly—Convicted at Nadia of forgery. Verdict upheld. 4 W. R., 25.
5. Baikant Nath Banerji—Convicted at Burdwan of perjury. Conviction set aside by the High Court. 5 W. R., 72.
6. Bissoranjan Mukerji—Convicted at Hooghly of rape and culpable homicide. Verdict affirmed. 6 W. R., 75.
7. Suprassana Ghosal—Convicted at Nadia of wrongful confinement. Verdict upheld. 6 W. R., 88.
8. Kali Charan Ganguli—Convicted of perjury in Assam. Verdict upheld. 7 W. R., 2.
9. Chandi Charan Banerji—Convicted in Assam of bribery. Verdict upheld. 6 W. R., 94.
10. Joy Kristo Goswamy—Convicted of theft at Murshidabad. Verdict upheld. 7 W. R., 22.
11. Baikant Nath Banerji—Convicted of forgery, 24-Pargannas. Conviction reversed on appeal. 10 W. R., 17.
12. Hurry Prosad Ganguly—Convicted at Nadia of hurt to extort confession. Verdict upheld. 14 W. R., 59.

13. Kashi Chunder Chuckerbutty—Convicted by a Dacca jury of a minor offence in a murder case. Prisoner did not appeal, but High Court as a Court of Revision acquitted him. *See* 19 W. R., 57.

After 1872.

14. Ramsadoy Chukervarti—Convicted of murder by a Hindu jury at Hooghly and sentenced to death. Acquitted by the High Court on appeal. 20 W. R., 19.
15. Nim Chand Mukerji—Convicted at Howrah of hurt to extort confession. Verdict upheld on appeal. 20 W. R., 41.
16. Prosonno Moitra—Convicted of forgery at Burdwan. Verdict upheld. 23 W. R., 56.
17. Gopal Chunder Mukerji—Convicted by a Hindu jury of murder (24-Parganas Sessions) in a case in which the only possible sentence would have been capital. The Judge differed, and on reference to the High Court the prisoner was acquitted. This was in what is known as the Shapur murder case.
18. Ashutosh Chuckerbutty—24-Parganas, convicted by a Hindu jury in 1878 of murder and sentenced to death. Sentence confirmed.
19. Hurry Churn Chuckerbutty—Jury at Hooghly convicted of grievous hurt in 1883. New trial ordered on appeal. 10 I. L. R., Cal. 140.
20. Matangini Devi—Convicted at Nadia in 1886 of murder of her husband. Sentenced to transportation for life.
21. Kedar Nath Chatterji—Convicted by a Hindu jury at Nadia in 1892 of murder and sentenced to death. Sentence affirmed by the High Court. Prisoner hanged.
22. Ram Charan Mukerji—Convicted of murder by a Hindu jury at Howrah in 1891 and sentenced to death by the Judge. Prisoner acquitted by the High Court.
23. Mokund Bhattacharji—Convicted at Hooghly of murder and sentenced to death in 1892. Sentence affirmed and prisoner hanged.

APPENDIX C.

Results of interference by the High Court in appeals from decisions of Sessions Judges in Non-Jury districts in Bengal, collected from Administration Reports. No. 155.

	Appeals disposed of.			Reversed, varied and remanded.			Percentage of reversals in non-jury cases.
	Jury cases (1).	Non-Jury cases (2).	Total.	Jury cases.	Non-Jury cases (3).	Total.	
1887	158	570	728	32	112	144	19
1888	148	692	840	30	139	169	20
1889	144	631	775	32	135	167	21
1890	184	657	841	39	139	178	21
1891	146	766	912	33	170	203	22
Grand Total	780	3,316	4,096	166	695	861	103

(1) Number of appeals against convictions by the Sessions Judges of the districts in which jury trial has been extended.

(2) Number of appeals disposed of by the High Court against convictions by the Sessions Judges of the districts in which jury trial has not been extended.

(3) The reports do not show separately the number of cases from non-jury districts in which the High Court interfered. But in appeals against verdicts of the jury the High Court being not empowered to question the verdict on the evidence, the ratio of the interference by the High Court is much lower than the ratio of interference in appeals from the non-jury districts in which appeals the High Court is competent to decide questions of fact. But conceding to Government that the ratio of interference is the same, the ratio of interference by the High Court in non-jury appeals would stand thus:—

Total appeals disposed of . Total appeals interfered with. . Total appeals, non-jury cases . Total appeals, non-jury cases, interfered with.

Average percentage of interference by High Court in appeals in non-jury cases is 20.

The decimal points have been rejected in all cases.

ERRATA AND CORRIGENDA.

Paragraph 9.—After the words "dated 8th November" add "*Vide* Appendix A." No. 156.

Paragraph 22.—After the words "even of murder by juries," add "*Vide* Appendix B."

Paragraph 24—

Instead of "13" read "20."

Instead of "double" read "three times."

End—add "*Vide* Appendix C."

No. 157. From the Government of India (Home Department), to Her Majesty's Secretary of State for India,—No. 5, dated the 18th January 1893.

As we have informed Your Lordship by telegraph on the 27th ultimo, we made public our Despatch No. 32, dated the 21st idem, in which we explained our views on the subject of the jury system in this country. We have now the honour to forward, for Your Lordship's consideration, copy of a letter No. 208—J., dated the 13th instant, from the Government of Bengal, submitting a further memorial from the persons whose previous representation was transmitted with our Despatch No. 1, dated the 4th January 1893, in which they discuss paragraph by paragraph the Despatch of the 21st December.

2. We do not think it necessary to reply at length to the allegations made in the present memorial, most of which have, we consider, been sufficiently dealt with in the Lieutenant-Governor's forwarding letter and in our Despatches of the 21st December and 4th January. The subject of paragraph 7 is noticed in paragraph 3 of the former and paragraph 4 of the latter Despatch. It has already been pointed out that, under all the three Codes of Criminal Procedure which have been in force in this country since 1861, it rested entirely with the Local Government to extend or restrict the application of the jury system in Bengal as it thought proper. Even if it were granted that the four Lieutenant-Governors mentioned by the memorialists held such strong views as now alleged in favour of the system, the fact that no one of them ventured to extend it beyond the Courts and districts to which it was applied in 1862 appears to us, as we said in our Despatch of the 4th January, to show very forcibly that the "preponderance of opinion" was altogether against the system as it then existed. We have already pointed out that the modifications made by Sir Charles Elliott in the system may now render such extension possible.

The eighth paragraph misrepresents the circumstances in which the enquiry set on foot by our letters of the 31st May 1890 was instituted. That defects in the jury system had contributed to the increase of crime was one of the allegations made in the reports from Local Governments received by us previous to the issue of our letter. So far as Bengal is concerned, these allegations will be found in paragraph 7 of Sir Steuart Bayley's letter No. P. $\frac{P}{1}$ 2, dated the 9th January 1890. Among the enclosures of that letter is the opinion of Mr. J. F. Stevens, a very experienced Judge, who condemns the jury system; and the paragraph referred to quotes other judicial and executive officers, winding up with a reference to the opinion of the High Court. The statement in the memorial that the "suggestion is absolutely baseless and unsupported by . . . . the opinions of judicial or even executive officers" is, therefore, incorrect.

The Resolution * of the Government of India, dated 8th November 1882, to which reference is made in paragraph 9 of the memorial, has always in practice been treated as relating exclusively to rules, regulations or notifications embodying rules or regulations which have the force of law, and not as covering orders of the kind referred to in section 269 of the Criminal Procedure Code. In this connection we may refer to section 6 of the General Clauses Act, 1887.

* *Vide* our Public Proceedings for November 1892, No. 70, page 2207.

In paragraph 12 of the memorial, and again in paragraph 20, reference is made to the fact that the statistics appended to the Bengal Government's letter of the 12th December last were not "formulated" until after the notification of the 28th October had been issued. Among the enclosures of Sir J. Edgar's letter of the 22nd June 1891 (enclosure No. 6 of our Despatch of the 21st December last), and in the opinions of the Honourable Judges of the High Court at Calcutta (enclosure No. 8 of the same Despatch), will be found a large mass of statistics, on a consideration of which the conclusion of the Bengal Government that certain cases should be withdrawn from the cognizance of juries was partially founded; but it is true that the figures submitted in December 1892 were not before that Government when the notification of October was issued. They were collected in view of the manner in which the statistics which now appear in Schedules I and II of the memorial of the 23rd December last, but were previously published and discussed in the newspapers, had been used by those who impugned the notification of October. These statistics were appealed to as evidence that the proportion of jury verdicts interfered with by the High Court to the total number of cases tried by jury was small; and the object of the Lieutenant-Governor in submitting the statistics of the 12th December was to show that the small proportion of verdicts disapproved had been obtained by neglecting the distinction between cases withdrawn and cases retained for jury trial, and that if only those cases which have been withdrawn were regarded, the proportion is much higher. But the conclusion at which the Lieutenant-Governor arrived was not based upon statistical evidence alone, nor, in our opinion (as already intimated in paragraph 8 of our Despatch of the 21st December), is such evidence the most important element in judging of the expediency of the action taken.

On paragraph 17 we have only to add to the Lieutenant-Governor's remarks that the correspondence to which he refers, dealing with the improvement of the police and especially of the officers charged with investigations, was placed at the disposal of the Press, and that the memorialists thus had every opportunity of becoming acquainted with it. Our letters to Local Governments of May* 1890 were given to the newspapers shortly after they issued, and excited considerable comment. The Bengal Police Committee, appointed at our suggestion by Sir Steuart Bayley in September 1890, held public sittings to record evidence; and Sir Charles Elliott's Resolution on its report, dated the 28th November 1891, in which the measures taken by him to improve the efficiency of the police force are fully stated, was published in the *Calcutta Gazette*. The Lieutenant-Governor's Circular of 24th October 1892, regarding the improvement of the jury lists, was also published in the *Calcutta Gazette* of the 10th November last.

*Home Department Police Proceedings of May 1890, Nos. 236—240, pages 1133—1161.

In regard to paragraph 19 it appears only necessary to remark that our letters of the 31st May 1890 (enclosure 1 of our Despatch of the 21st December) drew special attention to the differences between different Provinces in the classification of offences triable by jury, and it was with particular reference to this point that a review of the operation of the system was called for. It is, therefore, altogether incorrect to say, as is said in this paragraph, that the reports and opinions received "were called for, not upon the question whether such action should be taken as was taken by the issue of the notification, but upon wholly different questions."

Paragraphs 20, 21, 24 and 25 appear to us to be sufficiently characterised in paragraph 10 of Sir Charles Elliott's forwarding letter of the 13th instant. It is only necessary to add that, as indicated in the concluding portion of paragraph 11 of our Despatch of the 21st December, the verdicts of juries referred under section 307 of the Criminal Procedure Code to the High Court as perverse are not the only verdicts which are liable to be interfered with by that Court. When a sentence of death has been passed by the Judge upon a jury's verdict of guilty, the whole case is necessarily submitted to the High Court under section 374, and that Court, in spite of the verdict, may acquit the accused person under section 376. Similarly, a jury's verdict is not unfrequently set aside by the Court on appeal on the ground of misdirection by the Judge, which is treated as a matter of law under section 418. Both these classes of cases would have to be added to the totals of verdicts set aside under section 307, in order to render the statistics of jury trials in any way comparable with those of trials by a Judge and assessors, and even then the comparison would, for the reason given by Sir Charles Elliott, be of little value.

The statements made in paragraphs 22 and 23 are opposed to the experience of those judicial officers who have been in the best position to judge of their truth. The fact that a jury has occasionally been found ready to convict a Brahman does not in our opinion remove the risk which must always exist, so long as perverse verdicts in the other direction continue to be given in such cases. On this subject we have only to refer Your Lordship to paragraph 7 of our Despatch of the 4th January.

Paragraph 26 of the memorial appears to have been written without reference to section 324 of the Criminal Procedure Code, from which it will be seen that no person liable to serve as a juror can be struck out of the list except on objection sustained before the Sessions Judge sitting with the Collector of the District. We do not know whom the memorialists have in view as more "competent persons" to make out the list than these two high officials, to whom its preparation is entrusted by section 321.

Paragraphs 27 to 29 call for no remarks.

Paragraph 30 has been exhaustively dealt with in paragraphs 4 to 9 of Mr. Cotton's letter of the 13th instant. The letter quoted in paragraph 4 will be found among the enclosures of our Despatch to Your Lordship of this date, No. 4, regarding certain differences which have arisen between Sir Charles Elliott and the High Court, to which we beg to invite a reference. We have also dealt with the same subject in paragraph 6 of our Despatch of the 4th January.

The Sham Bazar case, referred to in paragraph 31, formed the subject of enclosure 7 of our Despatch of the 21st December, and is also discussed in paragraph 8 of our Despatch No. 4 of this date.

On paragraph 32 we have nothing to add to the remarks contained in the thirteenth paragraph of Mr. Cotton's letter, with which we entirely concur.

The rest of the memorial does not appear to call for notice from us.

No. 158. From W. Lee-Warner, Esq., C. S. I., Secretary to the Government of Bombay, to the Secretary to the Government of India, Home Department,—No. 614, dated the 27th January 1893.

I am directed to revert to your letter No. 1106, dated the 25th of August last, in which were contained certain suggestions for removing the defects indicated by experience in the practical working of the experiment hitherto made in this Presidency of applying trial by jury to some classes of penal offences in some districts in the mofussil.

2. The Governor in Council did not consider it advisable to proceed without full deliberation, and although the withdrawal from the juries in the districts of Ahmedabad, Surat and Belgaum of cases of murder had already been advocated by the Honourable Messrs. Justices Farran, Telang and others, and certain other changes recommended, yet it seemed to this Government advisable once more to consult, not merely the district officers, but also the Judges of the Sessions Courts and the Honourable the Chief Justice and Judges of Her Majesty's High Court of Judicature. The whole bench of the High Court of Bombay is now practically unanimous in favour of withdrawing from juries in the three districts of the Presidency proper, namely, Surat, Thána and Belgaum, where they now possess it, the right of trial of offences under Chapters VI and VII of the Indian Penal Code, as well as that of the trial of murder cases from the juries in Ahmedabad, Surat and Belgaum. Karáchi is not under the High Court and is therefore dealt with in the report of the Judicial Commissioner of Sind. The High Court also expresses the opinion that, subject to these changes, trial by jury should be extended apparently only to Sholápur, and then only after careful consideration by Government.

3. As the Government of India are aware, it has hitherto been found impracticable to apply trial by jury to criminal cases in the mofussil except in five out of the twenty-three districts and one city. In other words, trial by jury, and even so with restrictions, operates in five whole districts with a population of 4,557,630 out of the whole Presidency, leaving a population of 12,912,770 unaffected by the system, the district and city of Karáchi as well as the city of Bombay being excluded from this calculation. It was introduced into Poona in 1866 as an experiment, because in that centre there were several Government officials and pensioners. It was found to work fairly successfully, but the conditions to which that success was attributed were so peculiar that the same result could not be guaranteed if the experiment was extended elsewhere. Moreover, there was neither then nor since any public agitation or public demand for the introduction of the system. Nothing further was done until 1884, when, although upon what impulse the records of this Government do not show, the experiment was extended to Karáchi City in Sind to the Ahmedabad and Surat Districts in the Northern Division and to Belgaum District in the Southern Division. In the very next year, however, the system was greatly restricted in Ahmedabad, whilst to the Thána District it was extended. The notifications introducing the system vary in the several details, and it was always intended to introduce some symmetry into them and consolidate them, when experience was gained of the working of the system. That experience has now been obtained and the final opinions of their Lordships the Chief Justice and the Judges of Her Majesty's High Court, to which the utmost deference has always been paid by this Government, are now before it.

4. It appears, however, that although the law leaves it to the Local Government to determine where or how far trial by jury shall be introduced into the mofussil, the subject is already under the consideration of Her Majesty's Government. I am accordingly directed to enclose copies of the opinions upon which this Government would have proceeded to take action but for the above circumstances, and to inquire whether any further direction from the Government of India should be awaited before this Government takes into consideration the questions of the necessity for an amendment of the present system and of the policy of extending it to the district of Sholápur, to which the Judge, Mr. Satyendra Nath Tagore, advises that, subject to the suggestions of the Government of India in paragraph 8 of their letter of August 25th, 1892, with which he fully concurs, the system so restricted should be extended.

No. 159. Letter from C. H. Jopp, Esq., Acting Registrar, High Court, Appellate Side, Bombay, to the Secretary to Government of Bombay, Judicial Department,—No. 117, dated 19th January, 1893.

I am directed to acknowledge the receipt of your letter No. 6030, dated the 31st October last, forwarding copy of a letter, No. 1106 of the 25th August, 1892, from the Government of India in the Home Department, on the subject of the working of the system of trial

by jury in the Bombay Presidency, and requesting that His Excellency the Right Honourable the Governor in Council may be favoured with the opinion of the Honourable the Chief Justice and Judges on certain points in connection therewith.

2. In reply I am directed to forward, for the information of His Excellency in Council, copies of Minutes recorded, after consulting the Sessions Judges in the Presidency proper, by the Honourable the Chief Justice, the Honourable Mr. Justice Bayley, the Honourable Mr. Justice Parsons, the Honourable Mr. Justice Candy, the Honourable Mr. Justice Fulton and the Honourable Mr. Justice Starling on the papers.

Minute by the Honourable Mr. Justice FULTON, dated 3rd January 1893. No. 160.

The discussion that has taken place in regard to trial by jury shows that, in the opinion of most of the officers consulted, the system has worked well in Poona and Thána, and has completely failed in capital cases in Ahmedabad, Surat and Belgaum. Accepting these conclusions, which are based on the experience of most of the Sessions Judges who have held office in those districts since 1885, and which coincide with my own opinions as regards Ahmedabad and Belgaum, I think the best way to deal with the matter would be to divide jury districts into two classes in the first of which I would allow the trial by jury of all offences, excepting those referred to in Chapters VI and VII, Indian Penal Code, and abetments of, and attempts to commit, such excepted offences, and, in the second, all offences excepting those resulting in the death of the person injured or punishable under Chapters VI and VII, Indian Penal Code, and abetments of such offences. In the first class I would place the districts of Thána and Poona, and in the second those of Ahmedabad, Surat and Belgaum. There is no proposal to abolish trial by jury, and I think it very inexpedient to do so in any district in which it has already been introduced. It is looked upon as an important political concession by the educated classes, and such a concession once granted ought not, I think, to be withdrawn; but I cannot read the reports of Mr. Aston, Mr. McCorkell, Mr. Hammick, Dr. Pollen and Mr. Macpherson, and the observations of Mr. Justice Farran regarding his experience of certain classes of Gujarati jurors in the town of Bombay, without feeling that the bias against convictions in capital cases is so strong in the three districts named that fair and impartial trials in such cases cannot be obtained. The concurrence of opinion is so strong that it cannot be ascribed to the peculiar views of particular Judges. In districts like Poona and Thána, the good work done by juries is fully recognized by the Judges. I trust that under these circumstances the expediency of eliminating capital cases in the three districts above mentioned from the cognizance of juries will be generally recognized, for it will, I think, be felt that the state of affairs in those districts bring discredit on the whole system, which might easily be avoided by a different arrangement of the offences entrusted to juries for disposal. The principal objection is, it is true, only to their trial of capital cases, but considering the fine distinction between murder and culpable homicide not amounting to murder and other minor offences, and the inexpediency of leaving any doubt as to the constitution of the tribunal in any particular case, it seems desirable in districts of the second class to exclude from their cognizance all offences resulting in the death of the injured person.

It will, no doubt, be objected that the jury lists in Ahmedabad and Surat are not sufficiently large to enable jurors to try all the cases which my proposals would throw upon them without subjecting them to an unreasonable amount of inconvenience; but if this is so, the lists should, I think, be increased by the addition of respectable gentlemen unacquainted with English. Of these there are a large number, who are quite as competent to give a good opinion on evidence as many of the persons composing the present lists. No doubt the addition of men who cannot speak English will give the Judges more trouble in delivering their charges, but if they are careful not to sum up at too great length and to lay down the law briefly and authoritatively, they will in most cases have no difficulty in explaining in vernacular what they have got to say. In long and intricate cases it would always be open to the public prosecutor, if he thought there would be a difficulty in summing up, to object to the jurors who could not speak English; but probably in practice no serious inconvenience would be felt. In Belgaum, I understand, there are already a certain number of vernacular-speaking jurors on the list, and I am not aware that any difficulty has been experienced in explaining charges to them.

I observe that the Sessions Judge of Sholápur is in favour of the introduction of trial by jury in his district. The District Magistrate might be asked to confer with him and report whether he would support the proposal, and whether a suitable jury list (partly English-speaking and partly not) could be prepared. If both officers agreed and Government were

satisfied about the satisfactory nature of the jury list, the system might be introduced and Sholápur might be added to the list of second class districts. Similarly other districts might be added when both Judge and District Magistrate concurred in recommending such a course. All districts thus added should, in my opinion, be placed in the second class to begin with. In this way some progress might be made in the direction of accustoming the people to assist in the disposal of criminal cases, but so long as the inclusion of capital cases in all lists of offences triable by jury is insisted on, no extension of the system is probable, for, with the results in Ahmedabad, Surat and Belgaum before their eyes, Judges and District Magistrate are unlikely to advise its application to their own districts.

There is one other point in connection with trial by jury to which I wish to call attention, namely, the desirability of amending section 269, Criminal Procedure Code, by repealing the second clause and amending the first, so as to get rid of the word "offences." The section might be worded as follows:—

The meaning of the word "trial" does not seem open to any doubt. It is used in section 235, Criminal Procedure Code.

"The Local Government may, by order in the official Gazette, direct that all trials, or any particular class of trials, before any Court of Session shall be by jury in any district, and may revoke or alter such order."

Formerly the section ran as follows:—

"The Local Government may, by order in the official Gazette, direct that the trial of all offences, or of any particular class of offences, before any Court of Session shall be by jury in any district, and may revoke or alter such order.

"When the accused is charged at the same trial with several offences, of which some are and some are not triable by jury, he shall be tried by jury for all such offences."

This was apparently found inconvenient in the provinces where the graver offences were triable by Judge and assessors and the minor offences by jury, as its effect must naturally have been to allow juries occasionally to try murders and other grave offences, which they were not meant to try, when these happened to be associated with minor offences ordinarily triable by jury. Accordingly, when Act X of 1886 was passed, the section was altered into its present form. The result is most anomalous for when an accused person is charged with different offences, some of which are triable by jury and some by Judge and assessors, inconsistent results may be arrived at. In the Ahmedabad District a man may be charged with murder and house-breaking by night, and the only point in dispute may be the question of his identification. Under such circumstances the jury may acquit him of murder and on precisely the same evidence the Judge may feel it his duty to convict him of house-breaking. A system which can produce such inconsistent results seems open to serious objection. Possibly the scandal of contradictory findings in the same trial can be avoided by the High Court on reference by the Judge under section 307 or on appeal by the prisoner; but, having regard to the principles by which this Court has usually been guided in disposing of such references, it is not absolutely certain that this result will always be secured. But even though the High Court may have power to correct such anomalies, it does not seem desirable that Courts of Session should have to depend on its assistance to prevent their arriving at conclusions which cannot be described as otherwise than absurd.

It appears then, very desirable that in every trial the whole case should be disposed of either by the Judge and assessors or by the jury, and that this anomaly of trials partly by Judge and partly by jury should be got rid of.

If the section were amended as I suggest, it would be open to the Local Government so to frame its notification as to exclude from the cognizance of juries all trials in which the accused, or any of the accused, might be charged with any offence which it was not intended to leave to them for determination.

In the above remarks I have not referred to Karáchi, which is not under the High Court; but if, as I understand, the jury system has worked well there, the district should, I think, be placed in Class I along with Poona and Thana.

No. 161. Minute by the Honourable Mr. Justice CANDY, dated 9th January, 1893.

Our opinion is requested on the following two points, *viz.*:—

(1) Which of the offences specified in paragraph 8 of the Government of India's letter should be triable by jury in each Sessions Division in which the jury system is in force, and

(2) whether it is desirable that the jury system, with the proposed modifications, should be extended to any Sessions Division in which it is not now in force.

2. With regard to point (2) the most important question to be considered is whether in any place in which trial by jury is not now in force, a sufficient number of educated men as jurors can be obtained. The only place with regard to which an affirmative answer to this question is indicated is Sholápur. But, without consulting the District Magistrate, it is impossible to say whether the Sessions Judge's surmise is correct. I am opposed to having as jurors men who are not well acquainted with English. It must be difficult sometimes for a Sessions Judge to charge the jury in the vernacular, while a charge, translated sentence by sentence, must loose half its force; and a fair acquaintance with English is necessary as a standard for the educational attainments of jurors. Under this view I am inclined to hold that trial by jury cannot at present be extended to any other district.

3. With regard to point (1) I am of opinion that the jury system should be extended to all cases (except offences under Chapters VI and VII of the Penal Code) tried in the Sessions Court at Poona, Thána and Karáchi. In 1890 I was doubtful whether the jury list at Thána was large enough to admit of this extension. But I understand now that no difficulty need be feared on this score. I know from personal communication that the Sessions Judge of Karáchi would welcome the extension; so I mention the point, though Karáchi is not under our jurisdiction. The reports of the Sssions Judges at Poona and Thána show that they are in favour of the proposal. (Mr. Crowe tells me that he meant that all cases tried in the Sessions Court should be tried by jury, and not only those cases which are triable exclusively by the Sessions Court.) The advantages of having all cases tried in the Sessions Courts in these places with the aid of juries are manifest. There will be no difficulties occasioned by some of the counts in a charge being triable by the jury and others by assessors, and if any retrogression is necessary in the system in other places, Government can point to Poona, Thána and Karáchi, as showing that they are prepared to extend the system to the utmost in places in which experience has shown that intelligent and well-educated jurors can be obtained.

4. There remains, then, the question as regards Ahmedabad, Surat and Belgaum.

Personally, I would prefer that for the present there should be no change, beyond the amendment of the law which I proposed in my minute of 28th June, 1890, concurred in by Mr. Justice Telang and approved of by the Government of India. I should prefer to see how this amendment looks, together with due encouragement to Sessions Judges to refer every case in which they think a reference necessary for the ends of justice.

5. But there is a strong body of opinion that in any case, and at once, murder cases must be removed from the cognizance of juries in the three districts named above. Then comes the question, what cases should be tried by the juries in those places? Here, gain, the state of the panel must be considered. The Sessions Judge of Ahmedabad reports that his list of jurors is very small and hardly sufficient to meet the requirements of the present system, according to which only cases punishable with death tried in Ahmedabad itself (not Nadiád) are tried by juries. In Surat, I think, the list is swelled by including pleaders, to which there are obvious objections. At present, therefore, till the number of intelligent well-educated men in these places increases, the list of cases to be tried by juries must be simple and small. I would suggest all offences (including abetments and attempts) under Chapter XX (relating to marriage) and Chapter XVII (offences against property), excepting dacoity. Statistics could be easily prepared from which information could be obtained whether the number of cases falling within this list is not too large. If any change is made, I am inclined to think, after careful reconsideration of the subject, that the classification should not be according to the limit of the punishment, but according to the nature of the offence. This will tend to lessen the number of anomalous cases in which part of the case is tried by the jury and part by assessors. If after a year's experience the list is found too small, it will be easy to enlarge it under section 269 by adding another chapter or two of the Indian Penal Code.

Minute by the Honourable the Chief Justice, Sir CHARLES SARGENT. No. 162.

The reports of the Sessions Judges who have had experience of the working of the jury system at Thána and Poona leave no doubt on my mind that all offences tried in the Sessions

Court in those districts (except, perhaps, those under Chapters VI and VII of the Penal Code) should be tried by juries.

As to Ahmedabad, Surat and Belgaum, there appears to be almost a consensus of opinion that the jury system in those districts has resulted in a serious miscarriage of justice in the trial of murder cases. That being clearly established, I think that the offence of murder and its abetment should be withdrawn from the juries in those districts.

As to other offences, tried in the Sessions Court in those districts (except those comprised in Chapters VI and VII, the trial of which, I think, should in all cases be by Sessions Judge with assessors) they should be tried by juries, unless the list of jurors available should be thought too small for the purpose, in which case the offences to be tried by juries might be limited to offences under Chapters XX and XVII.

As to extending the jury system, the report of the Sessions Judge at Sholápur would appear to be favourable to its being introduced into that district; but the question should be carefully considered by Government before the change is made.

Minute by the Honourable Mr. Justice Parsons.

No. 163. I concur in the minute written by the Chief Justice, and have so recently expressed my opinion on the matter that it is not necessary for me to say more.

Minute by the Honourable Mr. Justice Starling.

No. 164. I entirely concur in the Minute of the Honourable the Chief Justice, and do not think it necessary to add anything thereto.

Minute by the Honourable Mr. Justice Bayley.

No. 165. I also entirely concur in the Minute of the Chief Justice, Sir Charles Sargent.

Dated 19th January 1893.

OPINIONS OF OFFICERS IN SIND.

No. 166. Memorandum from H. E. M. James, Esq., to the Secretary to the Government of Bombay, Judicial Department,—No. 2271, dated 23rd December, 1892.

In reply to Government reference No. 6032, of 31st October 1892, the Commissioner in Sind has the honour to append the reports received from all the District Magistrates except Karáchi. As Government have expedited his reply, the Commissioner will not wait for the missing report.

2. The Commissioner in Sind will first reply to the second query of the Government, *viz.*, whether the jury system should be extended to any Sessions Division where it is not now in force.

This question the Commissioner must answer without hesitation in the negative on the following grounds :—

(*a*) Backwardness of education and lack of competent jurors.

(*b*) Occasional bitter race-feeling and jealousy between the two great classes of Mahomedans and Hindus.

As Government are aware, in a portion of Sind a special regulation is in force on account of the impossibility of punishing crime amongst Biluchis, chiefly murder, by the aid of the ordinary Courts, and there is not one District Magistrate or Sessions Judge who approves of the extension of the jury system outside Karáchi. The District Magistrate of Thar and Parkar has omitted to say so specifically. But Mr. James is aware of his opinion.

3. The question of juries in Karáchi City has been dealt with by the Judicial Commissioner in his confidential No. 8, of 17th December 1892, which is forwarded with the Commissioner's No. 2272, dated the 23rd December 1892. The offences triable by jury in that city are:

(1) Offences punishable with death.
(2) ditto do. transportation for life.
(3) ditto do. imprisonment for ten years.

The Sessions Judge would give Karáchi juries the power of trying all cases, considering them to be perfectly competent. The Judicial Commissioner would, however, except—

(1) offences punishable with death :—

(2) offences under Chapters VI, VII and VIII of the Indian Penal Code.

(3) offences sent up for increased punishment on account of previous convictions under section 75, Indian Penal Code.

The Commissioner would concur with the Judicial Commissioner as to the competence of Karáchi juries to try the class of cases which he recommends, but he sees two difficulties in the way of his proposals. In the first place, while concurring in all that Mr. Macpherson has advanced regarding the difficulty of obtaining a verdict of murder, whether cases are tried by jurors or assessors, he thinks that, as Karáchi juries have hitherto given general satisfaction in the trial of murder cases, it would be well to leave such cases to them. Next, he is of opinion that it would be a hardship on the jurors themselves to materially extend the classes of cases which should be tried by their aid. The Commissioner has unfortunately not the time to call for and obtain a statement of the additional work which the Judicial Commissioner's proposals will throw on the jurors, and he confesses that he feels some difficulty in expressing an opinion on the subject without more detailed knowledge of the way in which juries have worked than the Judicial Commissioner's or Sessions Judge's reports afford. But he is of opinion that, to use a homely proverb, it is wrong to press a willing horse too hard. Jurors in Karáchi are, with scarcely any exception, all business men, working hard for their living. In England, the number available is incomparably larger, and the burden upon jurors is not so heavy. Englishmen have a sentimental predilection for trial by jury, as formerly it was their protection against corrupt Judges who were once the irresponsible nominees of the Crown, and every citizen looks on the burden as a natural incident. But in India such historical considerations have no force. Except in the case of British subjects (whose conservatism leads them to adhere to the system under which they were born) in India, a jury is only useful as an attempt to introduce partially a British institution which has been found to answer in England, and in a smaller degree to accustom Natives to take part in the administration of justice. But jurors of any competence are so few comparatively, that, when found, it would be a mistake to exact too much jury service from them.

4. On the whole, so far as Karáchi is concerned, the Commissioner sees no need for any change either in the way of restricting or extending the powers of jurors. Cases under Chapters VI, VII and VIII are uncommon.

5. The Commissioner is not quite sure whether section 269 of the Criminal Procedure Code permits the Government to direct that classes of cases from one portion of a district should be triable by jury and from another portion of the same district should not be so triable, *i.e.*, whether Government Resolution No. 6656 of 16th September 1884, directing that cases shall be tried by juries only in Karáchi (thus leaving it to the Sessions Judge when on circuit at Tatta or Kotri to try cases by assessors) is strictly legal. If such an arrangement were permissible, the Commissioner thinks the best plan would be to make *all* cases arising in Karáchi municipal limits and cantonment triable by juries and outside those limits by assessors. His main reason for this opinion is that the English or Parsi merchants on a jury have but little knowledge of the state of society or the habits and customs, say of Biluchis in the Kohistan, or even of the relations between Zamindars and their tenants in Sehwan, and so far as the district, as opposed to the city, of Karáchi is concerned, the Commissioner thinks that the Judge with assessors, would better appreciate the force of the evidence and give more satisfactory verdicts than a Karáchi jury.

6. The Commissioner has written, so far, entirely from the local point of view, treating Karáchi City as a kind of small Bombay, which is the fact, and hence he thinks that it requires and deserves exceptional treatment. He therefore recommends that it be left untouched.

7. But if Government are of opinion that it would be better to take this opportunity of generally revising the jury system, that the powers of Karáchi juries (even though local conditions still justify the different treatment of Karáchi from a place like Ahmedabad or Belgaum) should also be altered to such an extent as experience would dictate and that the trials for the whole district must be tried by jury (if of the class ordered in the *Gazette*), then the Commissioner would recommend the Judicial Commissioner's proposals *en bloc*, that is to give Karáchi juries all cases excepting—

(*a*) murder cases, because of the difficulty of appreciating fine distinctions between murder and culpable homicide, and the notorious dislike of even the best educated Natives to pass a verdict which may end in a sentence of death;

(b) cases under Chapters VI, VII and VIII, for the reasons given by Mr. Macpherson;
(c) cases committed to the Court of Session as punishable under section 75 of the Indian Penal Code which might otherwise have been disposed of by the Magistrate.

No. 167. Letter from A. F. WOODBURN, Esq., District Magistrate of Hyderabad, to the Secretary to Government of Bombay, Judicial Department,—No. 4—4866, dated 9th December 1892.

In reply to your No. 6032, of 31st October last, I have the honour to inform you that I have never served in a Sessions Division where the system of trial by jury is in force and have no official experience as to how it has worked, but from a perusal of the correspondence I am of opinion that in Sessions Divisions where the system is in force, the cases triable by jury should be limited to those specified as being triable by jury in the Madras Presidency.

I am very strongly of opinion, for the reasons stated by the Sessions Judge in the extract from his letter hereto appended, that it would be very impolitic to introduce the system in his district.

No. 168. Extract, paragraphs 1 to 4, from the confidential letter of the Sessions Judge, Hyderabad, to the Judicial Commissioner in Sind,—No. 3, of 28th November 1892.

1. In reply to your confidential No. 5—1892, I have the honour to report as follows :—

2. It is admitted on all sides apparently that the jury system has worked well in the city of Karachi and that no change is needed there.

3. From experience with assessors in Shikarpur and Hyderabad, I am quite unable to recommend the extension of the jury system to the Sessions Courts at those places. Sind has not yet been quite 50 years under British rule. Education is still in a backward state. And in addition to the obstacles noticed elsewhere, there is in Sind a considerable degree of animosity between Hindus and Mahomedans. No Hindu would consent to being tried by a Mahomedan jury; no Mahomedan would expect justice from a Hindu jury: and there is no third class sufficiently numerous to supply juries.

4. Thus the questions raised by the Government of India are of no practical interest to us in Sind.

No. 169. Lettter from G. JACOB, Esq., Sessions Judge, Shikárpur, to the District Magistrate, Shikárpur,—No. 7, dated 30th November, 1892.

In reply to your memorandum No. 25, of 19th instant (noted as despatched on the 22nd but received by me on the 27th only), I have the honour to append a copy of a letter, No. 4, of 10th instant, addressed by me on the same subject to the District Magistrate, Upper Sind Frontier, which embodies my opinion in clause (2) of paragraph 3 of Mr. Lee-Warner's circular.

2. As the system of trial by jury is not in force in this district, and is not, I think, likely to be introduced here at least for some years to come, it does not appear necessary to communicate to you at present my opinion as to what class of offences should be made triable by jury.

3. The accompaniments to your memorandum are herewith returned.

No. 170. Memorandum from R. GILES, Esq., District Magistrate, Shikárpur,—No. 26, dated 23rd December, 1892.

True copy, together with a copy of the accompaniment, forwarded to the Secretary to the Government of Bombay, Judicial Department, with reference to Circular No. 6032, dated the 31st October last.

2. The District Magistrate concurs in the Sessions Judge's opinion that it would be impossible (even if it were advisable) to introduce the jury system into the Shikárpur District.

No. 171. Letter from G. JACOB, Esq., Sessions Judge, Shikárpur, to the District Magistrate, Upper Sind Frontier,—No. 4, dated 10th November 1892.

In reply to your letter No. 5 (Confidential) of the 8th instant, I have the honour to inform you that, in my opinion, it would be impossible to introduce into this district the system of trial by jury.

2. There are very few of the assessors who have sat with me during the last year whom I should consider competent for the exercise of the functions of a jury in respect of careful attention and intelligence, and owing to the large number of murder cases coming before this Court every year a long list of jurors would be required.

3. Further knowledge of English is, I believe, always considered a requisite qualification for service as a juror, and the number of assessors from whom the list of jurors would probably be drawn possessing that qualification is small.

4. As I have not been favoured with a copy of the Government of India's letter referred to in the circular, I am not in a position to offer any opinion upon the question raised in clause (1) of paragraph 3.

Letter from C. E. S. STEELE, Esq., Deputy Commissioner, Thar and Parkar, to the Secretary to Government of Bombay, Judicial Department,—No. 819, dated 26th November 1892. No. 172.

Replying to your circular No. 6032, of the 31st ultimo, calling for opinion regarding the desirability of extending the jury system to Sessions Divisions in which it is not now in force, and as to any necessity there may be for a revision of the list of offences at present triable by jury, I have the honour to observe as follows.

My experience of Native character, extending over a period of more than twenty years, leads me to the conclusion that Natives are for the most part incapable of realizing that sense of responsibility which should guide a juryman in the discharge of his duty. This defect is sufficiently serious in my opinion to render the further extension of the system of trial by jury in the mofussil inexpedient, and indicates rather that where the system is retained the provisions of the law relating to such trials might with advantage be restricted to such offences as are legally compoundable or which might be held to constitute ground for civil action—a classification which would comprise cases of defamation, charges relating to criminal misappropriation of property, breach of trust, cheating, the graver forms of mischief, offences against trade and property marks, and those relating to marriage.

Letter from H. C. MULES, Esq., Acting District Magistrate, Upper Sind Frontier, to the Secretary to Government of Bombay, Judicial Department,—No. 67, dated 17th November 1892. No. 173.

As directed in paragraph 4 of your circular No. 6032, of 31st October, 1892, I have consulted the Sessions Judge, Shikárpur, on the subjects dealt with in your circular, and as to (1) I am unable to offer any opinion which could be of value, seeing that I have never served in any district where trial by jury is in force and am consequently unacquainted with the working of the system. As regards (2), I am most strongly of opinion that it would be absolutely impossible to introduce trial by jury in Upper Sind (Shikárpur and Upper Sind Frontier districts) without disastrous results, and my limited acquaintance with the Hyderabad District induces me to be of the same opinion regarding it. The Sessions Judge's opinion is the same as mine regarding Upper Sind. Jurors would have to be chosen from the class now chosen as assessors in sessions cases, and very few indeed are to be found fit for either duty, while the most extraordinary opinions are often delivered by assessors ; for example, in one of the last murder cases from this district tried by the Sessions Court, an assessor gave as his opinion that the accused was not guilty, one of his reasons being that there was "no blood on his head," and the other assessor concurred, the expression being used in a literal sense and not figuratively to imply innocence. I need hardly say that there was absolutely nothing in the case to account for the idea that the murderer should have had blood on his head.

Letter from Colonel R. I. CRAWFORD, District Magistrate, Karáchi, to the Commissioner in Sind,—No. 2681, dated 22nd December 1892. No. 174.

As requested by the Secretary to Government's confidential No. 6032, dated 31st October last, I have the honour to submit the following opinion on the subject of the Government of India's confidential letter No. 1106, dated 25th August last.

2. I have, as directed, consulted the Sessions Judge of Karáchi, and my experience of the working of the jury system in Karáchi coincides with the views expressed by Mr. Hart-Davies.

In Karáchi ample materials are available for the composition of intelligent juries, and I can call to recollection no case of a verdict given that has been otherwise than sensible and unbiassed, and I would not advocate for Karáchi a revision under section 269, Criminal Procedure Code, of the offences triable by jury.

3. I do not consider that the jury system, with or without modifications, should be extended to any other Sessions Division in Sind.

4. I am not asked to submit an opinion on other than the above two points, and therefore refrain from doing so.

No. 175. Letter from G. M. MACPHERSON, Esq., Judicial Commissioner in Sind, to the Secretary to Government of Bombay, Judicial Department,—No. 8, dated 17th December 1892.

In answer to your confidential letter No. 6031, dated the 31st October last, I have the honour, after consulting the Sessions Judges in Sind, to report as follows.

I agree with them in their opinion that the jury system should not be extended to either the Hyderabad or Shikárpur District, which districts are at present quite unfitted for such a system of trial. Mr. Jacob is of opinion that very few of those now available as assessors in the Shikárpur District would be capable of satisfactorily discharging the duties of jurymen, while Mr. Horsley points out that, in addition to this difficulty, there is the additional one specially applying to Sind, of what almost amounts to race animosity between Hindus and Musalmans in this province, who would mutually distrust each other, while there is no third class sufficiently numerous to supply jurors in those districts. There can be no doubt that often such a feeling of dislike and distrust or contempt does manifest itself.

2. In my letter No. 1847, of the 26th August 1890, I pointed out how the city of Karáchi is differently situated, and that here the jury system usually works well. I append for easy reference a copy of that letter, which was not sent to the Commissioner, showing that the juries in Karáchi are drawn from a mixed community unlike that found in Shikárpur, Hyderabad or most parts of the mofussil, and more resembling that existing in the Presidency towns.

3. I append a copy of Mr. Hart-Davies' report, who is of opinion that all sessions cases in Karáchi should be tried by jurors. As to this I differ in part from him. I am myself of opinion that no offence punishable with death should be tried by jury, and that jurors should not be troubled with comparatively petty cases of theft, etc., which are committed for trial before the Court of Session because the accused had been previously convicted of theft or some similar offence. But for such previous convictions the accused would in such cases have been tried by a Magistrate, and it seems undesirable to require jurors to attend for the trial of cases in which the committal to the Sessions Court depends not on the gravity of the offence, but on the criminal history of the convict. My reason for wishing to withdraw cases in which the sentence of death may be awarded are given in the copy appended. I still find that the same general tendency exists in Sessions Courts to find accused guilty of culpable homicide when he should be convicted of murder. Apart from this tendency it is difficult at times, even for a trained Judge, to distinguish which offence has really been committed. In cases tried with assessors the Sessions Judge has to give his reasons for the opinion at which he arrives, but a jury would not usually attend to the fine distinctions between murder and simple culpable homicide, and would often give, what I may call, a sentimental decision instead of a strictly legal one. I do not wish to impute unusual leniency in such cases to Karáchi juries, though I recommend that murder cases should not be tried by them. Even when they desire to give a righteous judgment, the difficulty of distinguishing between murder and culpable homicide is such that at times there must be the risk of a failure of justice. Juries cannot be asked for their reasons, and it would be unfair to expect from them the power of drawing and explaining the fine distinctions which admittedly at times exist between the two offences just specified. I therefore continue to be of opinion that offences punishable with death should be excluded from those triable by juries.

4. I think all cases under Chapters VI, VII and VIII of the Penal Code should also be excluded. Offences against the State or affecting the army and navy seem to me unfit for trial by juries, who may have a strong bias for or against the accused. I agree with the opinion expressed in the letter from the Government of India that trials of offences such as that of rioting require more detailed and minute attention to the evidence, so as to see how it affects every one of several people jointly tried, than a jury can often give.

5. The letter from the Government of India so far excepts Karáchi juries from the general considerations set forth as to juries in the mofussil, and, as above said, I do not mean to express distrust of them as to most cases. They may all be said to be fairly educated, and not a few of them are men of very good education and much experience in the affairs of life, and both Mr. Hosking and Mr. Hart-Davies have been generally satisfied with their decisions. Mr. Hosking, in his letter No. 1017, of the 19th August 1890, stated that in Karáchi the jury system worked well, while he deprecated its further extension, as he thought trial with assessors better. I would not withdraw more cases than I have above indicated from their cognizance, and, I think, to do so would be to show uncalled for distrust of a body who have, on the whole, done their duty as jurors satisfactorily. I think that all sessions cases tried in the city of Karáchi (not in the Sessions Division away from Karáchi, as a few occasionally are tried) should be by jury, except those under Chapters VI, VII and VIII of the Indian Penal Code and those which are

as to offences alleged to have resulted in death or in which the accused are committed for trial before the Sessions Court simply because of previous convictions, making them liable to increased punishment under section 75, Indian Penal Code. The last provision would let the Sessions Judge dispose of ordinary cases of theft in which an habitual offender is concerned without calling on jurors, who should not be unnecessarily taken away from their own business.

From G. M. MACPHERSON, Esq., Judicial Commissioner in Sind, to the Secretary to Government of Bombay, Judicial Department,—No. 1847, dated 26th August 1890. No. 176.

I have the honour to forward the report called for in Government Resolution No. 3783, of the 15th ultimo, on the working of the jury system in India.

2. I have myself, as Sessions Judge, had no experience of this matter. As Judge of the Sadar Court I have had various appeals before me, in which, had I been going into the facts of the cases, I should have wished to know the opinion of the jurors in detail on particular points. As, however, the Sessions Judge's charges to the jury were usually not open to objection, there was almost never any occasion for interference. The Sessions Judge of Karáchi referred one case in which he held the verdict of the jurors to be decidedly objectionable, and I upset the decision. They seemed to have laid hold of one circumstance, so as to prevent them from attending to the rest of the evidence. Except in the above instance, no acquittal by a jury has come before me.

3. In Karáchi the system of trial by jury is under far more favourable circumstances than usually accompany it. Karáchi more resembles Bombay in this respect than do Surat and other such places. The population of Karáchi includes merchants, both Native and European, who are accustomed to act on probabilities; who are often chosen privately to act as arbitrators, and who have broader views than are usually found among the class up-country from which assessors are drawn or jurors would have to be chosen. The results of Karáchi trials are therefore better than probably would be found in up-country stations. But in trying cases referred for confirmation of sentences of death, which cases had been tried here by jury, I have at times wished the judgment had been that of a Judge entering into the details of the evidence, and giving his own opinion in full as to various matters. But it is to be remembered that I have not seen the cases in which a jury may have convicted a person of a minor offence rather than of the offence of murder, as there are very few appeals in jury cases. The opinion of the Sessions Judge of Karáchi must, therefore, be of more importance as to facts met with in his experience than mine can be. I may say that I have only seen the best of the results of jury trials.

4. But I am very decidedly of opinion that trial by jury should not be extended to other districts, and should in some places be restricted. I may, however, add that my own private opinion is altogether against the system of trial by jury anywhere. I place far more trust in the decision of a trained Judge trying an intricate case than in that of five or twelve men unaccustomed to weigh evidence. Jurors may be looked on as the best men from the class of assessors. But from what I have seen of assessors I believe little reliance is often to be placed on them. There are some perverse ideas which often pervade the minds of assessors; they often think an eye-witness necessary when there is none, and at other times they reject the testimony of eye-witnesses, simply saying that accused would not have been so foolish as to commit an offence if he knew any one would see him do it. Some assessors are as intelligent as any jurors, even as there are as clever men of business up-country as are to be got in a commercial port like Karáchi or Bombay. But assessors' opinions are often based on very inapplicable grounds, and I do not think it would be safe to extend further the powers of deciding as to matters of fact which are given to a jury. Had the system not been introduced into Karáchi, I should not have recommended its adoption even here. It would be out of place for me to give a decided opinion as to its practical working in particular places elsewhere, but the general opinion formed by me from what I know of assessors, who form the class from which jurors must be drawn up-country, prevents me from recommending the extension of the system.

5. Mr. Hosking has sent me a copy of his letter on the subject, which shows that in Karáchi more than two-fifths of the jurors are Europeans or Eurasians, while one-fifth consists of Parsis. This does not represent the class of jurors who would usually be found up-country, and I would recommend only slight interference with the classes of cases tried here by jurors. Speaking generally and without reference to any particular place elsewhere, I think cases of offences against life should not be tried by a jury. If the accused is sentenced to death, the whole evidence has to be weighed by the High Court, in which case the detailed opinion of the Sessions Judge would be of use. There is to many jurors or assessors a great temptation

to convict of a minor offence instead of the capital one. Even Sessions Judges have, I think an undue tendency to find that cases come under the exceptions which reduce an offence from murder to simple culpable homicide. In considering some cases, in order to decide whether a sentence should be enhanced, it is almost necessary to know the Judge's detailed reasons for finding the offence not to be that of murder. Again, if a Sessions Judge refers many cases in which he differs from the verdict, his jurors come to be little more than assessors. The feeling that jurors are vested with powers not conferred on assessors leads to an unduly high opinion being placed on their opinions when cases are referred. I, therefore, think that no cases which might involve the sentence of death (such as cases of homicide and robbery accompanied by death) should be tried by jurors. I do not think that they should be troubled with cases less serious than the lowest which they now try, and I think that cases of theft, etc., which are only punishable with more than three years' imprisonment, because accused is an habitual offender, should not be tried by them. A larger number of jurors have to be called from their various employments to try such petty cases of theft, which are of importance only because accused has already been convicted, and I think such cases should be excluded. Also I think that cases of rape and unnatural offences out of Karachi should be excluded. I well recollect trying a case of the last-named offence, in which an assessor, holding a good social position, said accused was innocent because he had only done what all the young people of their families were in the habit of doing. The result is that I would recommend that even in Karáchi no cases involving the question whether a capital offence has been committed should be tried by a jury, while if jurors are continued elsewhere, I would relieve them everywhere from the trouble of trying cases of theft, etc., in which heavy punishment may be inflicted only because the accused is an habitual offender, and I would, except in Karáchi, exclude from jurors' cognizance all cases of rape and unnatural offences.

No. 177. From T. Hart-Davies, Esq., Sessions Judge, Karáchi, to the Judicial Commissioner in Sind,—No. 1971, dated 29th November 1892.

With reference to your confidential memorandum No. 5, dated the 26th instant, on a letter from the Secretary to Government, Bombay, No. 6031, dated the 3rd ultimo, I have the honour to report that I have nothing but satisfaction to record as far as the proceedings of Karáchi juries are concerned. During the last year I have only differed once with them in the conclusions they have arrived at, and I did not think it worth while to refer to the Judicial Commissioner on that occasion. So far from having their powers curtailed, I should be glad to see all sessions cases, without exception, tried by jury in the city of Karáchi.

2. As regards the general question, the Judges on the spot in each district may be left to deal with the matter, so I presume that my remarks should be confined solely to the district where I am now serving.

No. 178. From J. K. Spence, Esq., Commissioner, N. D., to the Secretary to Government of Bombay, Judicial Department,—No. 1516—44 (Confidential), dated 22nd December 1892.

With reference to your endorsement No 6033, I have the honour to forward the reports of the District Magistrates of Ahmedabad, Kaira, Panch Mahals, Broach and Thana, in reply to your No. 6038, dated 31st October last, on the subject of the cases that should be made triable by jury, and the extension of the jury system to Sessions Divisions other than those in which it already exists. The report of the District Magistrate of Surat has not yet been received.

2. I regret to say that I am peculiarly unfitted to give an opinion on the points referred to me. I have never served as a District Magistrate in any district in which trial by jury was in force. My longest experience as a District Magistrate was in the Panch Mahals when it was at first a non-regulation district, and as Commissioner my connection with criminal work is of the slightest.

3. The first and most important point seems to me to be whether the jury system is to be extended to Sessions Divisions other than those in which it at present exists. The answer to this must, I think, be unhesitatingly in the negative. The system exists in Ahmedabad, Surat and Thana. I am most certainly of opinion that it should not be extended to Kaira, Broach or the Panch Mahals. The sessions cases of the Panch Mahals are tried with those of the Kaira District at Nadiad in the latter district. Neither this town nor Broach can provide a sufficient number of sufficiently intelligent citizens to serve on juries.

4. The next question is whether the system as at present existing in the Sessions Divisions of Ahmedabad, Surat and Thana should be modified. There seems to be little doubt that in

the districts of Ahmedabad and Surat capital cases at least should be removed from the cognizance of juries. In Thana, the District Magistrate, who appears to be supported by the Sessions Judge, is of opinion that all cases triable by the Sessions Court should go before a jury.

5. If capital cases are to be removed from trial by jury in at least Ahmedabad and Surat, the further question arises whether any cases should be left for trial by jury and of what class? Personally I should be inclined to do away with trial by jury in all districts except Thana. If trial by jury is to be retained, I should feel inclined to restrict to the same cases as in Madras. The list for the North-West Provinces seems to me too liberal. I should not be inclined to trust to the judgment of an ordinary Native jury in cases of kidnapping and abduction, rape and offences against marriage. I should also be doubtful about mischief cases. Cases of dacoity might also be excluded for the reasons given by the District Magistrate of Kaira.

6. Regarding Thana I am diffident of giving an opinion. There can be no doubt the order of intelligence in the town is relatively speaking very high, and there seems no difficulty about forming a jury panel. If the verdict of the High Court is as favourable as that of the local officers, perhaps matters might be amended only so far as to be compatible with the views of the Government of India.

7. The great difficulty seems to be the formation of a sufficiently large panel of men of sufficient intelligence and breadth of view to be above local feeling and religious prejudice. There also seems to be an intense feeling of dislike to serve on a jury at all, and rumour is by no means silent as to corruption being resorted to evade service. Although the District Magistrate of Surat has not yet submitted his report, I am aware that he is making enquiry as to the names of the men who have actually served on juries hitherto, with a view to ascertaining whether the more wealthy and intelligent citizens have not managed to evade service. Such an enquiry might be useful if generally made. Mr. Lely has also suggested the formation of a "special" jury panel, based, as I understand, rather on intelligence than means and position. The idea seems to me worthy of consideration. The Surat report has been expedited and will be submitted as soon as it is received.

Letter from C. E. Frost, Esq., District Magistrate, Ahmedabad, to the Secretary to the Government of Bombay, Judicial Department,—No. C M—16, dated 15th December 1892. No. 179.

In reply to your letter No. 6032, of the 31st October 1892, I have the honour to observe that my opinion is asked in paragraph 3, (1) as to what offence should be tried by jury in Ahmedabad, (2) whether the jury system should be extended.

2. I have consulted the Sessions Judge and I agree with him that the jury system should be done away with in Ahmedabad altogether, and consequently that it should not be extended. I caused a statement of cases tried by jury to be prepared for three years, from which it will be seen that in each year more than half of the cases were acquitted, and that five cases were referred to the High Court, in four of which convictions were obtained and one is pending. I do not, of course, see the evidence in the acquitted cases, but I do see the Judge's charge to the jury; and it is my opinion that several more of the acquitted cases ought to have been referred to the High Court by the Judge himself. At present only capital cases in the Ahmedabad District are tried by jury, but a short time back the Kaira and Panch Mahals cases were also tried by an Ahmedabad jury. In 1888 I was District Magistrate of Kaira, and I think I am correct in saying that in that year 15 Kaira murder cases running were acquitted by the Ahmedabad jury. I know that the opinion was then that a conviction was quite hopeless in any case.

3. The work of serving on the jury is, I believe, very unpopular with all parties.

4. No one will regret the abolition of trial by jury in Ahmedabad except the Vakils, and as they control the vernacular papers, a good deal will be written on the subject. I do not agree with any system of meddling with trial by jury. If the jury is not responsible the system would become a farce, and I do not think that even the present system is justifiable on principle, only it is necessary in practice.

5. I enclose a copy of Mr. McCorkell's letter and the statement of cases.

Letter from G. McCorkell, Esq., Sessions Judge, Ahmedabad, to the Registrar to Her Majesty's High Court of Judicature, Appellate Side, Bombay,—No. 1734, dated 10th December 1892. No. 180.

Referring to your circular No. 1930, dated 21st ultimo, asking for an opinion on certain points raised in a letter from the Government of Bombay, No. 6030, dated 31st October, regarding trial by jury in the Ahmedabad Sessions Court.

As you are aware, the Sessions Judge of Ahmedabad exercises criminal jurisdiction over the Collectorates of Ahmedabad, Kaira and the Panch Mahals.

At present trial by jury exists only in cases committed for trial from the Ahmedabad Collectorate and which are punishable with death. Trial by jury does not exist as regards cases which are committed for trial from the Kaira and Panch Mahals Collectorates. Such cases are disposed of at the Sessions held at Nadiád in the Kaira Collectorate.

In my opinion trial by jury should be done away with altogether in the Ahmedabad District. Trial by jury for offences punishable with death in the Sessions Court of Ahmedabad has been completely discredited by successive Judicial officers, by the Government of Bombay and by the Government of India. Trial by jury in the case of offences punishable with death must in the interest of justice and society, be discontinued.

I am very strongly disinclined to recommend that the jury system should be continued in the Ahmedabad Collectorate. The present list of jurors is very small and hardly suffices to meet the requirements of the present system. To increase the number, cases triable by jury with an inelastic jury panel would, in my opinion, be an action at once impolitic and impracticable, and unless the District Magistrate is able to at once quadruple the number of names on the jury panel and at the same time exclude the names of all Government officials, it appears to me that it will be simply impossible to continue any system of trial by jury in the Ahmedabad Collectorate.

Assuming that a sufficiently extensive panel can be procured in the city of Ahmedabad I am of opinion that the list of jury cases should be restricted to offences under sections 376, 379, 380, 382, 392, 411, 412 and 414, Indian Penal Code.

As regards Kaira and the Panch Mahals, I am of opinion that no necessity exists for the introduction of the jury system into those districts, more especially as it would be perfectly impossible to provide a panel of jurors at Nadiád, where the Sessions for those districts are held.

No. 181. *Statement showing the number of Murder cases tried by the Sessions Court of Ahmedabad, Kaira and Panch Mahals during the years 1890, 1891 and 1892.*

Number of Cases and Month.	Number of Accused.	Where tried.	By whom.	Result.	Whether Jurors or Assessors.
1890.					
January, No. 1	1	Ahmedabad	Sessions Judge	Convicted	Jury.
February ,, 12	1	Do.	Do.	Acquitted	Do.
,, ,, 13	3	Do.	Do.	Convicted	Do.
March ,, 22	1	Do.	Do	Acquitted	Do.
April ,, 30	1	Do.	Do.	Do.	Do.
,, ,, 31	1	Do.	Do.	Convicted	Do.
May ,, 45	2	Do.	Do.	Do	Do.
,, ,, 46	4	Do.	Do.	Acquitted	Do.
June ,, 56	1	Do.	Do.	Convicted	Do.
July ,, 60	1	Do.	Do.	Referred to the High Court (convicted).	Do.
,, ,, 61	2	Do.	Do.	One convicted and one acquitted.	Do.
August ,, 71	1	Do.	Do.	Acquitted.	Do.
,, ,, 73	4	Do.	Do.	Two convicted and two acquitted.	Do.
September ,, 79	7	Do.	Do.	Acquitted	Do.
,, ,, 80	10	Do.	Do.	Do.	Do.
,, ,, 81	1	Do.	Do.	Referred to the High Court (convicted).	Do.
,, ,, 82	1	Do.	Do.	Do. Do.	Do.
October ,, 96	1	Do.	Do.	Convicted	Do.
,, ,, 97	1	Do.	Do.	Acquitted	Do.
,, ,, 98	1	Do.	Do.	Convicted	Do.
,, ,, 99	1	Do.	Do.	Charge withdrawn by the Public Prosecutor with the consent of the Court.	Do.
December ,, 129	1	Do.	Do.	Acquitted	Do.
,, ,, 132	2	Do.	Do.	One convicted and one acquitted.	Do.
,, ,, 133	1	Do.	Do.	Acquitted	Do.
1891.					
January, No. 1	1	Ahmedabad	Sessions Judge.	Acquitted	Jury.
,, ,, 2	1	Do.	Do.	Referred to the High Court (convicted).	Do.
February ,, 14	4	Do.	Do.	Convicted	Do.
,, ,, 15	1	Do.	Do.	Acquitted	Do.
March ,, 22	1	Do.	Do.	Do.	Do.

Statement showing the number of Murder cases tried by the Sessions Court of Ahmedabad, Kaira, and Panch Mahals during the years 1890, 1891 and 1892—concluded.

Number of Cases and Month.	Number of Accused.	Where tried.	By whom.	Result.	Whether Jurors or Assessors.
1891—contd.					
April No. 38	1	Ahmedabad	Sessions Judge	Acquitted	Jury.
,, ,, 39	1	Do.	Do.	Convicted	Do.
,, ,, 40	1	Do.	Do.	Do.	Do.
,, ,, 48	4	Nadiád	Do.	Acquitted	Assessors.
,, ,, 52	1	Ahmedabad	Do.	Do.	Jury.
May ,, 64	1	Do.	Do.	Convicted	Do.
,, ,, 68	4	Do.	Do	Do.	Do.
,, ,, 72	1	Nadiád	Joint Sessions Judge.	Do.	Assessors.
June ,, 80	1	Do.	Sessions Judge	Acquitted	Do.
,, ,, 82	4	Do.	Do.	Convicted	Do.
,, ,, 99	1	Ahmedabad	Joint Sessions Judge.	Acquitted	Jury.
July ,, 112	1	Nadiád	Do.	Do.	Assessors.
August ,, 117	2	Ahmedabad	Sessions Judge	One convicted and one acquitted.	Jury.
,, ,, 127	9	Nadiád	Joint Sessions Judge.	Acquitted	Assessors.
,, ,, 128	1	Do.	Do.	Do.	Do.
,, ,, 134	2	Do.	Do.	Convicted	Do.
November, ,, 148	3	Ahmedabad	Sessions Judge	Two convicted and one acquitted.	Jury.
December ,, 157	1	Do.	Do.	Acquitted	Do.
,, ,, 160	2	Do.	Do.	Do.	Do.
,, ,, 161	1	Do.	Do.	The prisoner died before his trial.	
,, ,, 162	1	Nadiád	Joint Sessions Judge.	Acquitted	Assessors.
,, ,, 165	1	Do.	Do.	Convicted	Do.
1892.					
January, No. 6	1	Nadiád	Joint Sessions Judge.	Convicted under Section 304, I. P. C.	Assessors.
February ,, 12	3	Ahmedabad	Sessions Judge	Acquitted	Jurors.
March ,, 22	1	Do.	Do.	Convicted	Do.
,, ,, 24	2	Do.	Do.	Acquitted	Do.
,, ,, 27	2	Nadiád	Do.	Do.	Assessors.
May ,, 42	2	Ahmedabad	Do.	No. 1 convicted under Sec. 304, I. P. C., No. 2 acquitted.	Jurors.
,, ,, 45	3	Do.	Do.	Acquitted	Do.
June ,, 50	1	Do.	Do.	Do.	Do.
,, ,, 53	4	Do.	Do.	No. 1 acquitted of murder, but convicted under Sec. 323, I. P. C., and the rest acquitted.	Do.
,, ,, 54	2	Do.	Do.	Referred to High Court (convicted.)	Do.
,, ,, 57	4	Do.	Joint Sessions Judge.	Acquitted	Do.
July ,, 68	1	Nadiád	Do.	Acquitted of murder, but convicted under Sec. 304, I. P. C.	Assessors.
August ,, 69	1	Ahmedabad	Sessions Judge	Acquitted	Jurors.
,, ,, 70	1	Do.	Do.	Convicted	Do.
,, ,, 71	1	Do.	Do.	Do.	Do.
,, ,, 80	1	Nadiád	Joint Sessions Judge.	Acquitted	Assessors.
,, ,, 81	4	Do.	Do.	No. 1 convicted and the rest acquitted.	Do.
September ,, 82	1	Ahmedabad	Sessions Judge	Convicted	Jurors.
,, ,, 83	1	Do.	Do.	Acquitted	Do.
October ,, 78	4	Do.	Do.	Referred to the High Court (pending).	Do.

From A. C. Logan, Esq., District Magistrate, Kaira, to the Secretary to the Government, of Bombay, Judicial Department,—No. 1366, dated 15th December 1892. No. 182.

I have the honour to reply to your circular No. 6032, dated the 31st October 1892.

2. The system of trial by jury being, in my opinion, defective on two grounds, one, the moral deficiencies of jurymen which frequently lead them to sympathise with certain descriptions of crime; the other, their deficiencies of intellect of training which render them unable to properly appreciate the weight and bearing of evidence, I consider it desirable that the crimes which should be submitted to their verdict are those which are (1) crimes which the moral sense of an average juror is practically certain to regard as crimes, and (2) crimes which are generally proved by evidence requiring no great critical acumen to appreciate. The crime selected from Chapter XVII of the Indian Penal Code, which in the Madras Presidency are tried by jury, appear to me with one exception to meet the above description, and I would

recommend that where trial by jury is to be introduced or maintained it should be confined to those crimes. The exception referred to is dacoity. Cases of this crime usually involve the consideration of evidence applying to a number of persons tried together, and such cases the Government of India admit to be unsuitable for juries.

3. I am unable to recommend that trial of any offences by jury should be extended to the Kaira District, partly because I have no reason to suppose that the extension of the system would be a gain from a judicial point of view, and partly because it would be impossible to make a satisfactory list of jurors at Nadiád or any other town where Sessions are or may be held.

4. The District and Sessions Judge of Ahmedabad, whom I have consulted, agrees generally with my views, but has addressed his communication on the subject to the High Court, by whom it will, no doubt, be forwarded in due course to Government.

No. 183. Letter from H. T. OMMANNEY, Esq., District Magistrate, Panch Mahâls, to the Secretary to the Government of Bombay, Judicial Department,—No. 14, dated 14th December 1892.

With reference to Government circular letter No. 6032, dated 31st October last, I have the honour to report that the list of offences to be tried with the aid of juries which has been adopted in the North-West Provinces and Oudh appears to me to be suitable for application to the Sessions Divisions of this Presidency in which the jury system is in force. I would not recommend the extension of the jury system to any Sessions Division in which it is not now in force. Ahmedabad will fall in this category when the aid of juries for the trial of offences punishable with death shall have been dispensed with, and it does not appear to me desirable to re-establish the jury system in this division.

2. The Sessions Judge of Ahmedabad whom I have consulted as directed in paragraph 3 of the circular, draws attention to the difficulty of nominating a jury panel strong enough to provide juries for trials, if the list of offences to be tried with the aid of juries is much enlarged. It is possible that this difficulty may be met with in other divisions besides Ahmedabad.

No. 184. Letter from WILLIAM ALLEN, Esq., District Magistrate, Broach, to the Secretary to the Government of Bombay, Judicial Department,—No. 36, dated 8th December 1892.

In reply to your circular No. 6032, dated 31st October, I have the honour to reply as follows.

The jury system not having been introduced into this district, I presume I am not called on to give any reply to question (1) in paragraph 3 of your circular.

2. In reply to question (2), I would emphatically state my opinion against the introduction of the jury system into this district, which, though well advanced as regards wealth and education, is as to moral development perhaps as backward as any district in the whole Presidency. The Assistant Sessions Judge of Broach states that he knows of no district in the Presidency to which the jury system could with advantage be extended, and that he does not recommend that any of the offences mentioned in paragraph 8 of the Government of India's letter should be made triable by juries in the Ahmedabad District, and I concur in his opinion. If minor offences were made triable by juries, there would never be a conviction against any one who could get persons to put pressure on the persons composing the jury.

No. 185. Letter from W. F. SINCLAIR, Esq., District Magistrate, Thána, to the Secretary to the Government of Bombay, Judicial Department,—No. 6179, dated 8th November 1892.

In answer to your circular No. 6032, dated 31st ultimo, on the subject of the working of the system of trial by jury in the Bombay Presidency, I have the honour to observe, in the first instance, that I have known the North Konkan, that is, the Thána Sessions Division and two Native States enclosed therein for nearly 19 years, and have served therein in every judicial position from Magistrate of the First Class to Sessions Judge during over 10 years' active service on the spot. I have also for some months served in the Division as an Officer of Police.

2. In the course of that time I have had no more quarrel with the jury system than the superior Courts have had with my own exercise of my own powers, that is to say, none worth mentioning.

3. It has to be observed that the conditions of the Thána Sessions Court are somewhat peculiar. The working of a jury system depends a good deal upon the Bench and the Bar.

The Tháua Bench, if not exactly marked out for special regard by a Judicial Commissionership, like that of Karachi, is nevertheless so notoriously important as to be usually filled by Judges at least above the departmental average.

4. The long labour of Mr. Coghlan has left here a Bar at least equal to any in the mufassil. I myself consider it superior to the Karachi Bar, including the Barristers; and although the Bombay Bar favours us with frequent visits, I do not find (with a single exception) that these result in any better conduct of cases than I can secure from the local Bar.

5. When Barristers or Solicitors from Bombay have been employed before me, I have very often found their instruction practically added to my other duties, whether they were Natives or Europeans. In knowledge of practice and procedure they are often much below the local Vakils, and as to that defect is often added complete ignorance of the language of the country, I cannot say that I think the Bombay Bar a bit better than that of Thána for the conduct of a Sessions case.

6. As regards the material of a Thána jury, I think it at least equal in all cases to that of a Bombay common jury; and in some matters even superior to some of the Bombay special juries *so far as I can find out.* I have, therefore, on my own account, no alteration to suggest in the present procedure.

7. The Sessions Judge tells me that he would willingly see *all* sessions cases triable by jury here, and that he thinks the panel sufficient for the work.

8. He adds that the service of summons on jurors would probably be better done direct by means of his bailiffs. In both points I am disposed to agree with him, and he knows more about the details of these matters than I can.

9. As to any such retrograde step as the withdrawal from the cognition of juries of the class of offences now and here triable by them, I am glad to say that such a measure is not only unnecessary but undesirable. I may add, that though it is a little beyond the terms of your reference, that both Mr. Crawford and I came here with little love for juries. I have served in Ahmedabad and Poona and he in the former station. As to Ahmedabad, neither of us think the jury system suited to that district at all; as for Poona, when I left it 18 years ago, the corruption of juries was the common talk of all Natives. I hope they have improved since. It is not often that I can say a good thing for my "*administreo*" as a body; but it is all the pleasanter when I can vindicate their claim in a very important matter to the privileges and powers of Her Majesty's British subjects.

Letter from F. S. P. Lely, Esq., District Magistrate, Surat, to the Secretary to the Government of Bombay' Judicial Department,—No. M.—82, dated 19th January, 1893. No. 186.

In reply to your circular No. 6032, of 31st October last, and subsequent correspondence, I have the honour to report having examined a number of sessions jury cases which ended in acquittal during the last two years. Out of five cases of culpable homicide the verdict in three was not unreasonable. In one the evidence was such as would, I feel sure, have convinced an ordinary English jury. In the fifth the crime was specially cruel. It was proved beyond a reasonable doubt that the accused, after robbing a boy of seven years old of his ornaments, pushed him down a well and shut the lid on him, leaving the little fellow to stay in the water till morning, when he was found still alive. The jury found him guilty only of the minor offence of kidnapping. I am much surprised that the Judge did not submit the case to the High Court, as it seems to me to have been a monstruous miscarriage of justice.

2. Government appear, however, to have already decided that the jury system is inapplicable to capital cases in this district. With reference to cases of transportation for life and imprisonment for ten years, I would point out that the city of Surat has been in past times liable to outbreaks of popular feeling as unreasoning as they are short-lived. If at such a time serious crime was committed as in the riots fifteen years ago, it would be impossible to ensure a calm and unbiassed trial by local juries in the Sessions Court.

3. It seems to be admitted that the beginning was made at the wrong end, and to rectify this I would withdraw from the cognizance of juries all capital offences and offences under Chapters VI, VII, VIII, XI, XII, etc., and at the same time make over to them as many as possible of the minor. Thus the limitation on one side would be compensated for by extension on the other. With this view I would make triable by jury all the sections adopted in Madras and also all those adopted in the North-Western Provinces and Oudh, and would limit the list to them. About as much would then be given as taken away.

4. In reply to your second question, I do not see why the Madras list should not be extended to all districts of Gujarát, except, perhaps, the Panch Mahâls. Such a very cautious beginning could scarcely do harm, and it would tend to counterbalance the check which popular representation would be supposed to receive by the changes proposed for this district.

Opinions of Officers in the Central Division.

No. 187. Letter from G. B. Reid, Esq., Acting Commissioner, C. D., to the Secretary to the Government of Bombay, Judicial Department,—No. P.-2285—51 Confl., dated 18th December, 1892.

I have been waiting for the reports from the District Magistrates in this Division before answering your confidential circular No. 6032, of 31st October 1892. As I am shortly giving over charge of the Division, I forward the reports already received from the districts noted in the margin. It will be seen that in all cases the Sessions Judges have been consulted and that in some cases their opinion appended.

Khandesh, Nasik, Sholapur, Satara.

2. The only Sessions Division in the Central Division in which the jury system prevails is Poona, and there is not the least doubt that, except Karáchi, with its large European mercantile community, it is by far the most advanced place in the mofussil, and that, as a matter of fact, in Poona the jury system has not worked badly on the whole.

For Poona, therefore, I would recommend that all Sessions cases under Chapter XVI may continue to be tried by jury in addition to the list of cases prevailing in the North-West Provinces and Oudh. For all other places I would recommend that the list be the same as for the North-West Provinces and Oudh. I am strongly in favour of all capital cases being excluded in Ahmedabad and Surât, both of which I know.

3. In spite of Mr. Tagore's opinion, I do not recommend the extension of the system to any other place in the Central Division.

4. It is clear that the success of the system depends very much upon the view that the High Court of the Presidency takes of the importance to be attached to the verdict of a jury when a reference is made under Section 307. The High Court has very large discretionary powers, and if these had been more frequently exercised, there is every reason to suppose that the undoubted failures of justice would have been much less numerous. On this point I think that the Sessions Judge of Sátára has made some very pertinent remarks. An English jury of 12, with its unanimous verdict, has little but the name in common with a Bombay mufassil jury with its majority of three in a total number of five, to say nothing of the difference between a system which represents the historical evolution of centuries and the result of a mere executive order of a local Government. The suggestion that a mufassil jury should be composed of at least seven and a majority must be of at least five members seems a good one.

5. I consider that the alternative proposal made by the three Judges of the Bombay High Court, paragraph 10 of the Government of India, is likely to do much good.

No. 188. Letter from H. E. Winter, Esq., District Magistrate of Nasik, to the Secretary to the Government of Bombay, Judicial Department,—No. 7590, dated 12th November, 1892.

In answer to your No. 6032, dated the 31st October, 1892, I have the honour to observe that, in my opinion, trial by jury should be introduced in all the 12 districts of which I have had the honour of being District Magistrate. I do not exclude the five Mahâls, because though I do not know Kaira where Sessions cases from that Collectorate are tried, I presume that the people there are as intelligent as in other parts of Gujarát, and I look upon the jury system being, as it is, in some sort analogous to, though not homologous with, the ancient "panchayat" system of the country as being readily comprehensible by the Natives, while it is calculated from an educational point of view to improve their limited faculty of weighing evidence and under the safeguards devised in the able letter from the Government of India is not likely to cause a miscarriage of justice.

2. As regards the class of cases, I think that they should not be such as Natives are likely to be unable or unwilling to come to a right conclusion upon owing to—

(1) religious or other prejudice,

(2) a possibility of jurors themselves having committed offences of the kind,

(3) where owing to the probable number of the accused the difficulty of disentangling a mass of evidence is considerable.

Under (1) I would exclude from trial by jury murder and offences against religion.

Under (2) offences under Sections 372 and 373, Penal Code, giving or fabricating false and concealing true evidence, offences concerning stolen property, forgery and bribery and under the Age of Consent Act.

Under (3) the offence of rioting and aggravated rioting, of robbery and dacoity.

The only other offences which, it occurs to me, should be excluded from those triable by jury are those of a political nature.

3. The list of offences to be tried by jury would, of course, be ordered by Government without giving reasons for exclusion or inclusion.

4. I have, as directed, consulted the Sessions Judge. Before doing so I had already written this letter and see no reason to alter the conclusions to which I had come.

Letter from H. F. SILCOCK, Esq., District Magistrate Khándesh, to the Secretary to the Government of Bombay, Judicial Department,—No. 8883—Confl. 4, dated 12th November 1892. No. 189.

In reply to your circular letter No. 6032, dated 31st ultimo, I have the honour, after consulting the Sessions Judge of Khándesh, to inform you that I think (1) the list of offences triable by jury in the Madras Presidency, as given in paragraph 8 of the Government of India's letter No. 1106, dated August 26th, should be made applicable in this Presidency to those districts where the jury system already exists, and (2) that trial by jury should not be extended to Khándesh at least, as the district is by no means ripe for it.

2. I am very doubtful, too, of the policy of extending it to other Deccan districts in which I have served; for although I have personally had but little practical experience of the system, I could not fail to hear of its results, and Mr. Steward, who has had practical experience of it as Sessions Judge of Thána, has little or nothing to say in its favour.

Letter from S. TAGORE, Esq., Sessions Judge, Sholápur-Bijápur, to W. T. MORISON, Esq., District Magistrate Sholápur-Bijápur,—No. 2611, dated 5th November 1892. No. 190.

With reference to your confidential memorandum of the 2nd instant, calling for my opinion on the points raised in paragraph 3 of the Government circular No. 6032, dated the 31st ultimo, regarding the proposed modification in the jury system now in force in this Presidency, I have the honour to state that I fully concur in the view taken by the Government of India in paragraph 8 of their letter No. 1106, of the 25th August, 1892, accompanying the circular under reference, as to the expediency of revising the list of offences triable by jury, and I am of opinion that the list at present prevailing in the North-Western Provinces and Oudh, with the addition of offences under Chapters XI, XVIII, and Sections 377 (unnatural offence), 406-409 (criminal breach of trust) and 500-502 (defamation) may be declared triable by juries in Sessions Courts in the Bombay Presidency. I also approve of the amendment of Section 303 of the Criminal Procedure Code as proposed by Justices Birdwood, Candy and Telang, so as to empower the Sessions Judge, if he thinks fit, whether before or after a general verdict has been given, to take special verdicts from the jurors on particular issues of facts and perhaps on the general credibility of particular evidence, as such an amendment is desirable both to place the Sessions Judge in a position to decide whether or not a reference should be made to the High Court under Section 307 and to furnish the High Court with proper materials to determine whether the verdict given is one which should be upheld or not.

2. With regard to the second point, I beg to state that Government had it already under their contemplation to extend the jury system to all such districts where men qualified to serve as jurors were available, and, with this view, opinions were called for by them from the various Sessions Judges in 1884 to see where such system could be made applicable, but I believe the matter had to be dropped owing to the insufficiency of the number of qualified men in some of these districts. The only districts in this Presidency, excluding Sind, where this system is now in force are Poona, Thána, Ahmedabad, Belgaum and Surat. Now that education has far advanced, it appears to me desirable that, with proposed modifications, the system should be extended, as an experimental measure, to such other districts in the Presidency in which a sufficient number of educated and intelligent men are available.

3. I, therefore, take this opportunity of suggesting that the system, with the modifications as now proposed, may be made applicable to the Sholápur District, where, I am informed a sufficient number of English-knowing qualified men, able to serve as jurors, are available.

4. The accompaniments received with your letter under reply are herewith returned.

No. 191. Letter from W. T. MORISON, Esq., District Magistrate, Sholápur, to the Secretary to the Government of Bombay, Judicial Department,—No. 6449, dated 23rd November 1892.

I have the honour to acknowledge receipt of your circular No. 6032, dated 31st ultimo, on the subject of certain proposals to alter the existing system of trial by jury in this Presidency, and to state that I have consulted the Sessions Judge of Sholápur-Bijápur, a copy of whose letter No. 2611, dated 5th instant, I beg to forward herewith.

2. It will be seen that Mr. Tagore is of opinion (1) that the list of jury cases for this Presidency should be that adopted in the North-West Provinces and Oudh, with the addition of offences under Chapters XI (false evidence and offences against public justice), XVIII (offences relating to documents, etc.), and Sections 377 (unnatural offences), 406-409 (criminal breach of trust) and 500-502 (defamation), and (2) that the jury system should be extended to the Sholápur District.

3. In giving my own opinion on the same points, I must first state that I have no personal experience of the conduct of Indian juries, and that my acquaintance with the system, as acquired from reports, is considerably limited by the fact that I have been for five years on special duty in Upper Burma, where the jury system does not exist. I am at one with Mr. Tagore in thinking that the North-West Provinces and Oudh list should be taken as the basis for this Presidency, but I would add to it the following offences only, *viz.*, Sections 377 (unnatural offences), 402 (assembling for the purpose of dacoity), 406-409 (criminal breach of trust). Offences under Section 377 are I believe, more common and, therefore, perhaps less repugnant to the people of the North-Western Provinces than in this Presidency, which may account for their exclusion from the list of the former province. Here, however, I think they may be safely left to juries. Any special reasons which may account for the omission of offences under Section 402 in the North-West Provinces do not exist in Bombay, and I would, therefore, propose to add that section to the list; and offences under Sections 406-409 (criminal breach of trust) being for the most part of the nature of trade offences, there seems every reason to believe that they would be fairly appreciated by juries, which always include a large proportion of tradesmen.

4. I cannot, however, agree with Mr. Tagore's proposal as to offences against public justice (Chapter XI), relating to documents (Chapter XVIII), or defamation. It cannot be denied that Native public opinion in this country does not yet regard offences under Chapters XI and XVIII with the same repugnance and in the same light as they presented themselves to the framers of the Indian Penal Code; and in entrusting such cases to juries there would always be considerable danger of failures of justice. With regard to defamation, the majority of cases brought to trial are against the editors of Native newspapers, who are always men of much influence with the classes from which jurors are drawn. Looking to the present tone and spirit of the Native Press, which must be described as decidedly antagonistic to Government, I am of opinion that it would not be safe to entrust such cases to juries.

5. My opinion, therefore, is that the North-West Provinces and Oudh list, with the addition of offences under Sections 377, 402, 406-409, should be applied to this Presidency.

6. With regard to the 2nd point, Mr. Tagore's opinion must carry much greater weight than anything I can say, after only a two months' residence in the district. With this reservation, I must express my decided opinion that neither the circumstances of this district, nor the results of the jury system, as already tried in the more important towns of Ahmedabad, Surat and Belgaum, warrant its extension, for the present at least, to Sholápur. Except Government servants and pleaders, there are few English-understanding Natives in the district and the considerable railway population in the suburbs of Sholápur itself would be disqualified for serving by their ignorance of the Court language. And until the system is pronounced a success in such towns as Ahmedabad and Surat, its extension to this district would, in my opinion, be highly inexpendient and likely only to give rise to much discontent, should it afterwards have to be abolished.

No. 192. Letter from J. W. WALKER, Esq., Sessions Judge, Sátára, to the District Magistrate, Sátára, No. 2418, dated 24th November, 1892.

With reference to Government circular No. 6032, of the 31st October last, Judicial Department, I have the honour to report that, in my opinion, trial by jury in the mufassal has not worked properly, chiefly because the Criminal Procedure Code neither gave the Courts of Session a real jury, nor clearly brought out the fact that a Court of Sessions jury was only an imperfect jury, and the High Courts ignored the broad distinctions between a Presidency jury and a mufassal jury, and treated the latter as a real jury.

2. The High Court jury consists of nine persons and must decide unanimously, or by a two-thirds majority if the Judge concurs. And when the jury is discharged, the Judge may order a re-trial. The law did not introduce such a system into the mufassal. It allowed the number to be as low as three and the decision to be by a bare majority of one. And as this was plainly not a real jury, the Judge was given power to refer a case to the High Court when he completely differed from the verdict; but unfortunately, as the name of jury had been retained, the High Courts usually proceeded to accept the verdicts as if they were given by real juries, and practically no control was exercised.

3. The persons who compose a mufassal jury are generally, as compared with a Presidency jury, more prejudiced and have less education and less experience of the world. If, therefore, the law had provided that a mufassal jury should consist of a full number and decide unanimously or by a two-thirds majority with the concurrence of the Judge, it might still well have provided some control in the case of perverse verdicts. But what happened was that juries consisted of five persons and they were allowed to decide by a bare majority, and the control of the Judge provided by Section 307 of the Code became merely nominal.

4. While I was Judge in Ahmedabad in 1884, a jury held in a case of murder by three to two that the prisoner was not guilty. I had not a shadow of doubt in the case, as the evidence was as strong and direct as it could well be and was quite unshaken, and I referred the case to the High Court, but the only judgment pronounced was that the Court saw no reason to interfere with the verdict of the jury. Here there were two of the jury for a conviction and the Judge agreed with them; and yet the High Court accepted the verdict by a majority of *one*, without going into the evidence as on an appeal. In another murder case which I referred to the High Court, the Bombay Government, at my request, instructed the Advocate General, Mr. Latham, to appear and urge the High Court to consider the evidence on the above ground that the mufassal jury was not a true jury, but without any successful result. I may add that Mr. Latham subsequently told me that he quite concurred with the view I took, but that he could not get the Court to agree.

5. I see, however, from a newspaper report of a case in the Madras High Court, quite recently, that that Court considers it necessary to examine the evidence and decide on the merits when a Sessions Judge refers a case on his completely differing from the jury.

6. My experience is that there is very seldom a perverse verdict by an unanimous jury. And I think that if the verdict of juries in the Courts of Sessions had only been accepted as in the High Courts, when the jury was unanimous or when the judge concurred with the majority, and if some provision had been made for the disposal of all other cases in which the jury was not unanimous, there would have been few failures of justice. But it was hopeless to expect a mufassal jury to return a proper verdict, when the decision might be by a majority of one, and when the jury knew that the High Court would probably uphold the verdict, even if by a majority of one, as against the Judge.

7. The remedy would thus seem to be to require that a jury shall consist of a sufficient number of persons and decide unanimously or by a majority with the concurrence of the Judge, and to provide for the disposal of other cases where the jury are not unanimous.

The alterations I would propose are:—

(1) A jury in a Court of Session should consist of seven persons. Where the jury list is too small to secure that number, trial by jury should be abolished altogether.

(2) The jury must decide unanimously, or by a majority of five to two where the Judge agrees with the majority.

(3) Where the jury are not unanimous, and there is not a majority of five to two with which the Judge concurs, the Judge should record the opinion of each person and dispose of the case as if it had been tried by assessors.

8. It is admittedly impossible at present to extend trial by jury in the mufassal to its full and proper extent, but the object is to concede that right, if possible, when the country is sufficiently advanced. Hence, there would appear to be no objection to setting out clearly in the law that the full system is not at present conceded, and that it is necessary to provide against perverse verdicts by unanimous juries. I think, therefore, there should be a further provision that when the jury is unanimous and the judge considers that the verdict is entirely against the weight of evidence, and it is necessary for the ends of justice to refer the case to the High Court, he should record the findings of the jury on all such questions of fact as he may consider necessary, and refer the case with his reasons. The High Court, on such reference, might then order a re-trial before another Judge or dispose of the case itself as if an appeal from an order of acquittal or conviction, as the case may be.

This provision might be extended to or removed from each district, as the Local Government thought necessary, the object being to encourage the proper development of trial by jury.

No. 193. Letter from R. E. Candy, Esq., District, Magistrate Sátára, to the Commissioner, Central Division,—No. 12—8286, dated 26th November 1892.

In reply to circular No. 6032 in the Judicial Department, on the subject noted in the margin, I have the honour to submit in original the report made by Mr. Walker, the Sessions Judge, whose opinion is of value, he having had personal experience of the practical working of the system.

Subject—Working of the system of trial by jury in the Bombay Presidency.

2. The jury system is not in force in the Satara Sessions Division and I am of opinion that it should not be extended to this division. The list of persons qualified to serve on a jury is small and barely suffices to meet the demands for assessors in sessions cases.

3. Having been asked to state which of the offences specified in paragraph 8 of the Government of India's letter should be triable by jury, I have the honour to express my opinion that the offences included in the list of the North-West Provinces and Oudh are those which might, with most safety, be tried with the aid of juries.

No. 194. Letter from E. J. Ebden, Esq., District Magistrate, Ahmednagar, to the Secretary to the Government of Bombay, Judicial Department,—No. D.—14, dated 19th December 1892.

I have the honour, after consultation with the Sessions Judge of Ahmednagar, to reply to your circular No. 6032, of 31st October, 1892, on the subject of the classification of offences triable by jury and of the extension of the jury system.

2. It is natural to presume that the advantages of trial by jury will be most clearly exhibited in the cases of the more serious offences, and had the subject been a new one and the question that of a partial and experimental introduction of the system, the classification of offences triable by jury which has been adopted in this Presidency is that which it would appear proper to have suggested.

3. I concur with the Sessions Judge in thinking that the jury system, if worked at all, should be extended to all Sessions cases, and that if experience shows that the system fails in those very instances which must be regarded as the ones most suitable and proper for the illustration of its advantages, it is better that it should be abolished altogether than that its traditional importance and usefulness should be degraded by the limitation of it to the trial of minor offences.

4. I cannot therefore express approval of the classification suggested in paragraph 8 of the Government of India's letter, nor do I feel inclined, if such modification be insisted on, to recommend the extension of the system to any Sessions Division in which it is not in force.

5. With regard to the failures of justice alluded to in paragraph 3 of the Government of India's letter, I would respectfully suggest inquiry as to the possibility of extending to the districts concerned the special jury system that is in force in Presidency towns (Criminal Procedure Code, sections 276, 311, etc.). If that were done, it might not be a difficult matter to exclude from the special jury lists the names of jurors whose "religious and conscientious" convictions lead to the habitually perverse verdicts complained of, and to select from that list jurors for the trial of those classes of cases in which miscarriages of justice have hitherto occurred.

No. 195. Memorandum from J. F. Fleet, Esq., Acting Commissioner, C. D.—No. P.-12—Confl., dated 6th January, 1893.

Submitted to Government in continuation of Mr. Reid's letter No. P.-2285—51 Confl., dated 18th December last.

2. Mr. Ebden does not categorically answer the questions to which a reply is required by Government; but his reply will probably be taken as sufficient.

3. Mr. Reid has already reported his opinion that the jury system should not be extended to any districts in the Central Division other than Poona. The undersigned is opposed to any extension of the system and would restrict it by excluding cases of murder.

OPINIONS OF OFFICERS IN THE SOUTHERN DIVISION.

From J. NUGENT, Esq., Commissioner, S. D., to the Secretary to the Government of Bombay, Judicial Department,—No. 36-P.—5 (Confl.), dated 6th January 1893. No. 196.

With reference to Government Memorandum No. 6033, dated the 31st October last, I have the honour to submit to Government the reports, noted in the margin, of the District Magistrates in the Southern Division on the subject of the system of trial by jury, and to observe as follows:—

Report from the District Magistrate, Dharwar, No. 7215–94, dated the 16th November 1892, and accompaniments.
Do. Bijapur, No. 4963 of 22nd November 1892, and accompaniment.
Do. Kanara, No. 4579 of 25th November 1892, and accompaniment.
Do. Ratnagari, No. S. R. 18—Confl., dated November 1892.
Do. Kolaba, No. Confl.,—38 of 30th November 1892.
Do. Belgaum, No. Confl.—24 of 21st December 1892, and accompaniment.

2. Opinion is asked by Government on two points,—(1) what offences should be tried by juries in a Sessions Division where the jury system is in force, and (2) is it desirable to extend the system of trial by jury to Sessions Divisions in which it is not now in force?

3. To take the second point first. Trial by jury at present exists in only one (Belgaum) of the six Collectorates comprised in the Southern Division. There is a general consensus of opinion on the part of the Sessions Judges and District Magistrates of the other Collectorates that the system of trial by jury should not be introduced into them. In this view I most certainly concur. The results attained in Belgaum have not been so successful as to render an extension of the system to other districts in the Southern Division at all advisable, and, furthermore, in the districts other than Belgaum, it would be practically impossible to find a sufficient number of persons competent to serve as jurors.

4. As regards the first point, I should be sorry to see the system of trial by jury entirely abolished where once it has been introduced. This would, I think, be a retrograde, impolitic and unpopular step for which no adequate justification exists. But on the evidence there is, in my opinion, ample proof of the wisdom of a course which would withdraw from the cognizance of juries certain classes of offences now triable by them in Belgaum and elsewhere. The trial of cases of culpable homicide, whether amounting or not amounting to murder should, I think, most decidedly not be entrusted to juries. Nor would I continue the trial by juries of forgery cases and of offences coming under Chapters VI and VII of the Indian Penal Code. All other cases committed to the Sessions Court might, I think, be tried before juries in a Sessions Division where the jury system is in force.

From A. W. CRAWLEY-BOEVEY, Esq., District Magistrate, Dharwar, to the Secretary to the Government of Bombay, Judicial Department,—No. 7215—94, dated 16th November 1892. No. 197.

Replying to your letter No. 6032, of 31st ultimo (Confl.), on the subject of the jury system, I have the honour to append copy of the Sessions Judge's opinion on the subject (letter No. 1876-1, of 14th November 1892).

2. I agree with the Sessions Judge in thinking that the jury system, even when amended as proposed, ought not, at present, to be extended to the Dharwar District for the reasons stated by the Judge.

3. As this system is not in force at present in this district and its introduction is deprecated, no reply to your first question seems to be called for.

4. There seems to be a general concurrence of opinion throughout India that cases of murder and culpable homicide should be excluded from the cognizance of juries, and the Government of Bombay has been invited to consider whether such cases ought not in future to be excluded under Section 269, Criminal Procedure Code.

In this connection, I think it not out of place to invite the attention of Government to the fact that the alternative system of trying capital cases by means of a Judge and two assessors is also by no means entirely successful in this and other districts where the jury system is not in force. I append figures which show the results of trials for murder and culpable homicide in the Dharwar Sessions Court for the past three years.

5. It seems open to question whether the general results of such trials would have been even less successful under the jury system, and, although I deprecate the introduction of that system, I should be sorry to create the impression that the results of the alternative system were, in my opinion, entirely satisfactory.

This is a point of view which cannot, I think, be wholly excluded in considering this important subject.

No. 198. Letter from J. L. JOHNSTONE, Esq., Sessions Judge, Dharwar, to the District Magistrate, Dharwar,—No. 1876—1, dated 14th November 1892.

I have the honour to return the accompaniments of your confidential No. 7142—91, dated 11th November 1892.

2. The points for my opinion are:—

(*a*) Which of the offences specified in paragraph 8 of the Government of India's letter should be triable by jury;

(*b*) Whether it is desirable that the jury system with the proposed modifications should be extended to this Sessions Division of Dharwar.

3. (*a*) The list of jury cases in the Madras Presidency should be adopted except cases under sections 392-395, 397-399, and 412.

I exclude cases under these sections as too serious for trial by jury, and as in most instances many prisoners would be tried together and the same difficulty would arise, as in cases under Chapter VIII, in discriminating between the parts of the evidence which bear against individual prisoners.

(*b*) It is not expedient, nor, indeed, at present is it possible that the jury system, with any modifications in any form or shape, should be extended to this district. There are not a sufficient number of English-knowing members of the community from whom juries could be selected in this district. Moreover, I doubt much whether the people of this part of the country are sufficiently advanced in Western ideas to even understand and appreciate the system, much less to contribute to its proper working. The jury is not a plant of southern growth, and its transplantation to the soil of the south of this Presidency has not been successful in the neighbouring district of Belgaum, than which, in my opinion, this district is even less fitted for the successful experiment of trial by jury. It is not necessary or expedient to go into the details further than to refer to the Belgaum experiences.

Statement showing the results of criminal trials in serious cases in the Court of Sessions during the three years 1889, 1890 and 1891.

Cases.	Number of cases.	Number of persons committed for trial.	Number of Persons. Convicted.	Acquitted.	Discharged.	Percentage of persons convicted to number committed.	Remarks.
1889.							
1. Murder or attempts to murder .	9	13	10	3	...	77 per cent.	
2. Culpable homicide . . .	4	15	3	8	4	20 do.	
1890.							
1. Murder or attempts to murder .	11	24	6	...	18	25 per cent.	
2. Culpable homicide . . .	3	5	...	...	5	0 do.	
1891.							
1. Murder or attempts to murder .	8	16	7	3	6	43·7 per cent.	
2. Culpable homicide . . .	...	...	...	...	...	......	

No. 199. From J. MONTEATH, Esq., District Magistrate, Bijapur, to the Secretary to the Government of Bombay, Judicial Department,—No. 4963, dated 22nd November 1892.

With reference to Government Resolution, in the Judicial Department, Confidential, No. 6032, dated 31st ultimo, I have the honour to state that I requested the Sessions Judge of Sholápur-Bijápur to favour me with the opinion he proposed to submit to the High Court, or with any remarks he might be willing to make, and he has sent to me copy of a letter he has written to the District Magistrate of Sholápur. This letter* will, no doubt, eventually reach Government, but I append a copy for the information of the Commissioner, S. D. Mr. Tagore suggests that the system with the modifications proposed may be made applicable to the Sholápur District, where, he is informed, "a sufficient number of English-knowing and qualified men able to serve as jurors are now available." I understand this opinion to be limited to the Sholápur District, and not to extend to the Sholapur-Bijápur Sessions Division.

**Vide* accompaniment to Sholápur District Magistrate's report.

2. As the Sessions Judge has said nothing affecting the Bijápur District, I have personally consulted the Assistant Sessions Judge, F. P., stationed here. Mr. Inamdar does not think that there are sufficient educated men in the Bijápur District to make the introduction of the jury system practicable. This opinion accords with that of other officials consulted by me confidentially who have had considerable experience in this district as well as with my own, which is, however, not based on a wide knowledge of the people of the district. Indeed, I am informed that very considerable difficulty is found in obtaining competent assessors for the trial of all the sessions cases.

3. It follows that I cannot recommend the extension of the system of trial by jury to the Bijápur District, and my knowledge of other districts is not recent enough to form the basis of an opinion of any value on the questions formulated in the third paragraph of your letter. I can only say that I have never understood what good object is to be gained by the introduction of the system of trial by jury into this country. The circumstances which rendered the system a great safeguard of liberty in England do not exist here, and indeed, have long ceased to exist in England. It seems clear that men trained to appreciate evidence are more likely to arrive at a just conclusion than men who have never before had to weigh evidence at all, except in the most casual way. It is recognised in paragraph 10 of the letter from the Government of India that the jurors will be, in most cases, untrained men, and throughout the letter that care is needed to prevent a general miscarriage of justice through their decisions. But if the efficient administration of justice is not to be the paramount consideration, I do not know what is. I do not suppose that much weight can be attached to the demand for trial by jury as an English privilege by people who are ignorant of the fact that it is not now generally felt as a privilege in England, but rather the contrary.

4. If, however, the system of trial by jury is maintained or extended, the view of the Government of India that juries should deal with the less serious cases, which, as a rule, either involve simpler issues or are suitably punished with a comparatively light sentence rather than with the more serious, is obviously reasonable.

Letter from R. A. Lamb, Esq., Acting District Magistrate, Kanara, to the Secretary to the Government of Bombay, Judicial Department,—No. 4579, dated 25th November 1892. No. 200.

With reference to your confidential circular letter No. 6032, dated 31st ultimo, I have the honour to report that the jury system is not in force in Kanara, that there are, so far as I can ascertain, no local conditions which render its introduction advisable, and that on general considerations I am of opinion that the system is unsuitable and undesirable. The Sessions Judge (copy of whose letter on the subject is attached) concurs in these views.

Letter from A. H. Unwin, Esq., Sessions Judge, Kanara, to the District Magistrate, Kanara,—No. 11, dated 23rd November 1892. No. 201.

Referring to your confidential No. 4439, dated 18th instant, I have the honour to state that I concur with you in deprecating any extension of the jury system into this remote district. I have merely to add that, while I know that the introduction of the system has, by the inherent antagonism between its own ethics and those of Hindus, wrought miscarriage of justice and other positive harm, I have never been able to see what positive good it has effected which would not as surely and truthfully have been effected without it; nor how the relations between the present Government and the governed out here have ever been analogous to those which in Britain made the system necessary for the protection of the subject, and famous in the constitutional history of his island.

Letter from A. Cumine, Esq., District Magistrate, Ratnagiri, to the Secretary to the Government of Bombay, Judicial Department, —No. S. R. 18—Confl., dated November 1892. No. 202.

I have the honour to reply to your confidential No. 6032, of 31st October, Judicial Department.

2. I have, as directed, consulted the Sessions Judge.

3. And I beg to submit my opinion that—

(a) In the Bombay districts in which the jury system is in force, the Madras list should be adopted with the addition (from the North-West Provinces list) of offences under sections 381, 403, 404, 413, 426 to 432, 434 to 436, 440, 448, 450, 460, 462.

(b) It is not desirable that the jury system, even with the proposed modifications, should be introduced into the Ratnagiri District. For one thing, the number of persons fit to be jury men is so small that each would have to attend so frequently as to cause inconvenience and produce irritation.

No. 203. Letter from C. B. WINCHESTER, Esq., District Magistrate, Kolába, to the Secretary to the Government of Bombay, Judicial Department,—No. Confl.,—38, dated 30th November 1892.

In reply to your confidential circular No. 6032, of 31st October last, I have the honour to state that I am of opinion (1) that the list prevailing in the North-West Provinces and Oudh is that which is most suitable for trial by jury wherever the system is in force, and (2) that it is not desirable to extend the jury system to Sessions at Alibág.

2. I should mention that Surat is the only district where I have had much experience of the jury system. I am no great admirer of it anywhere.

3. As regards this district, Mr. Crawford has reminded my predecessor that the two northern tálukas of Panvel and Karjat, from which the committal lies to Thána, are already under the jury system. From the other five tálukas the committals are to Alibág, where in the fair season the Thána Judge or his Assistant tries without a jury, and in the rains the District Magistrate of Kolába, sitting with out a jury as Joint Sessions Judge of Thána. The position, therefore, is somewhat anomalous, and if all the trials by Court of Session were held at Thána, it would, no doubt, be right to follow the ordinary Thána procedure. But at Alibág it is not, I think, possible to find a sufficiently well-educated and intelligent body of men to form the required juries. Out of 131 assessors on the list only 14 know English, and some of them know it very little; and I agree with Mr. Crawford that it is not desirable to have men ignorant of English on the jury list. I do not also think very highly of the assessors here as assessors, though on this point I am bound to say that Messrs. Kennedy and Crawford entertain a more favourable view. There is not, so far as I am aware, any wish among the people for the introduction of the jury system. It seems better to make no change so long as Sessions continue to be held at Alibág.

No. 204. Letter from F. L. CHARLES, Esq., District Magistrate, Belgaum, to the Secretary to the Government of Bombay, Judicial Department,—No. Confl.,—24, dated 21st December 1892.

In compliance with Government circular (Judicial) No. 6032, of 31st October 1892, I have the honour to forward a report by Mr. Macpherson, C.I.E., Sessions Judge, Belgaum, No. 2491, of 19th December 1892.

I agree in the main with what he says. I object on principle altogether to juries, as I think it perfectly illogical to suppose that the shopkeepers and karkuns, who compose them, can in almost any case be more likely to appreciate evidence at its true value than a Judge who has spent his whole life in doing nothing but trying cases. The jury system is also productive of the greatest inconvenience to the Government service; as at every Sessions case men are summoned as jurors from public offices, because there are not among non-officials a sufficient number of educated men to provide material out of which to compose the jury.

3. I presume that this could never have been the original intention. Judging by the outcry raised in Bengal, it would seem that the jury system is only or mainly prized as a species of local self-government conferring power on non-officials.

4. To confine selection as jurors chiefly to the ranks of Government clerks, as is now done of necessity, does not, in my opinion, in any way fulfil the intention of conferring power on the general community; while if Government clerks and school-masters, etc., were excluded the whole system would be reduced to a mere burlesque, the Judge gravely expounding legal principles to a set of men no more capable of understanding what he said than if he were to talk to an elementary class of school-girls in a jungle village. I should like to see the whole jury system abolished. It annoys every one, and, in my opinion, is a much worse way of trying cases than by a Judge with assessors.

5. So far as I understand the origin of the jury system in England, it was the outcome of a desire to prevent the Crown from obtaining convictions through servile Judges, who were in by-gone days amenable to orders from higher authority.

6. No one now-a-days would be bold enough to say that there is any danger of this; and the distinguishing feature of our Judicial Department is an almost excessive independence treating the executive not only not with deference, but almost with hostility.

7. In my opinion, therefore, the whole reason for the existence of a jury is absent in this country with all the safeguards of appeals and revision now provided in the Code, and I would do away with it entirely in Sessions cases.

8. If, however, this cannot be done, then I would adopt Mr. Macpherson's proposals, and in the case of murder especially, I would withdraw the trial from juries. As Mr. Macpherson points out, juries object to convict where hanging would ensue; and I observe that it is almost impossible to prevail upon the High Court to reverse the verdict when it differs from the Judge's opinion; although, had the case been tried by the Judge alone, they would rarely interfere with the Judge's opinion in favour of conviction.

Letter from C. G. W. MACPHERSON, Esq., C.I.E., Sessions Judge, Belgaum, to the District Magistrate, Belgaum,—No. 2491, dated 19th December 1892. No. 205.

With reference to your endorsement No. 5999—22 Confl., of November 10th, 1892, forwarding, for favour of my remarks, Government circular No. 6032 of October 31st, 1892 (Judicial Department), with its accompaniments, relative to the subject of the working of the system of trial by jury in the Bombay Presidency, I have the honour to report as follows.

2. My experience as a Judge of the working of the jury system is limited to the districts of Surat and Belgaum. In Surat there was very little criminal work, but I saw enough of the system to convince me that its introduction was a mistake in murder cases.

3. I have officiated as a District and Sessions Judge of Belgaum during the past 20 months, during which time it has so happened that the criminal work has been fully double the average I have therefore seen a good deal of the jury system.

4. In Belgaum all sessions cases punishable with death, transportation for life or imprisonment for 10 years or upwards are tried with the assistance of a jury.

5. In my opinion the commencement has been made at the wrong end, and it would have been much better if the less important Sessions cases had been relegated to the jury and the more serious offences left to the Judge with assessors.

6. As matters are, however, I would recommend that in this district all cases of murder, culpable homicide not amounting to murder, forgery, and all cases under Chapters VI and VII of the Penal Code, be removed from the cognizance of a jury, and that all other Sessions cases should be tried with the assistance of a jury. In these latter cases, *e.g.*, cases of arson, rape, robbery, dacoity,* habitual offenders, etc., the question usually turns upon identity or upon whether the charge is a "bunow," and here, if anywhere, the opinion of a jury is valuable.

* Should, as in the case of Vasudev Balvant Fadke, organized dacoity assume the proportions of almost a small rebellion, there would be a chance of jurors being terrorized and it might be necessary to remove this class of offence from the cognizance of a jury in the affected districts.

7. In murder cases, however, there is, in the first place, almost a certainty that the majority of the jury will be averse to returning a verdict likely to result in a death sentence and there is, in the second place, a high degree of probability that a large proportion of the jury will in nice cases be unable to appreciate the distinctions between murder and culpable homicide not amounting to murder.

8. In forgery cases the objection is of a somewhat different kind. The sections bearing on forgery are a good deal involved one with another and the cases are generally in other respects complicated, and I am inclined to think that when the Judge has expounded the law on the subject in sufficient detail to meet the requirements of the High Court, he has before him a bewildered set of men who, presuming that they wish to give an honest verdict, probably return one on elementary principles, and without much reference either to the evidence or to the law expounded from the Bench.

9. It is necessary to remember who the jurors are. Perhaps a Belgaum jury may be composed of—

(1) A shopkeeper.
(2) An assistant school-master.
(3) A karkun from the Commissariat Department.
(4) A karkun from the Executive Engineer's Office.
(5) A karkun from the Collector's Office.

10. These gentlemen might, probably, arrive at a very correct verdict in (say) an arson, rape, or dacoity case, but I do not believe that any Judge in his charge could cause them really to appreciate the nice points of law which frequently arise in murder, and almost always arise in forgery cases. The vast majority of karkuns in my own office, at all events, would in such cases go into Court with minds almost blank on the subject, and I do not believe that the

longest and most lucid charge from the Bench could do no more than remove a portion of the haze. Karkuns from other offices would probably know no more, if so much. It is to be remembered that the highest paid and most intelligent subordinates are on grounds of public convenience not included in the list of jurors, while the next best paid, though perhaps included, can seldom, I find, be spared to attend.

11. I would recommend, therefore, that all cases under Chapters VI, VII and XVIII and under Sections 194, 302, 303, 304, 304A, 305, 306, 307, 308, and 396 be tried by the Judge (with assessors) and that all other sessions cases be tried by the Judge with a jury.

12. As regards the various suggestions which have been noticed in the accompaniment to the circular under reference, I am of opinion—

(*a*) that it would not be desirable to authorize the Judge to require the jury to return special verdicts on particular issues put to them by him;

(*b*) that it would not be advisable to make it incumbent on the Judge to ascertain the reasons of the jury for their verdict;

(*c*) that references to the High Court should not be made compulsory when the Judge does not concur with the jury;

(*d*) that an appeal should not be granted on the facts unless the Judge agrees with the majority of the jury.

13. My reasons briefly are that juries are not very logical and that "the reasonable men" who are supposed to compose them frequently, like unreasonable women, arrive at right conclusions by wrong roads, and requiring them to formulate their reasons or show how their findings on this or that issue of fact support their general conclusion, is asking too much of the material with which one has to deal. I would either within the limitations I have indicated frankly accept the system, except in cases of obviously perverse verdicts, or I would abolish it. Frequent references by the Judge to the High Court, are I think, extremely undesirable, as tending to relieve the jury of all sense of responsibility.

14. I may observe that, were it a question of introducing the jury system here my opinion would be against its introduction, as I consider a Judge aided by two assessors, a better tribunal in the vast majority of cases than a Judge with a jury. The Judge would form his own opinion as to the intelligence and independence of the assessors and could see what degree of attention they gave the case, and would be assisted by them on points in which their experience of Native life made their opinion specially valuable, while he would not be bound by their general verdict. It is also an obvious remark that entrusting the decision of important cases in which much money may be flying about, to five persons, whose aggregate pay may amount to R200 per mensem, is a course open to objection. The case is, however, different where the system has been in force for a long period with, on the whole, fairly satisfactory results, and I may here remark that I have observed with pleasure the attention which the jurors almost invariably bestow on the matter before them.

15. In conclusion, I would observe that the large percentage of acquittals to convictions in Sessions cases, which the executive have occasionally noticed, is not solely due to the perversity of juries or the technicalities of the law. Two other causes operate strongly in this direction. The first is that the remuneration assigned by Government to their Public Prosecutor is not as a rule sufficient to enable them to obtain the *necessary time of the best or one of the best pleaders.* A second-rate pleader matched against a better man loses cases he ought to win, and even a good pleader is not likely to succeed in an intricate case, unless he has devoted much time to it before it comes into Court, and as the time of a good pleader is valuable, he will not devote the time, unless he is paid for doing so. The second of the causes referred to above is that many cases are committed to the Sessions which would have been discharged had the Magistrate availed himself of the provisions of Section 209 of the Criminal Procedure Code. One story is good until another is told; and it is not very difficult for a person, who wishes to have his enemy disgraced by being tried by the Court of Session (probably he is in jail till tried) to bring forward a charge which, if no evidence is taken for the defence amounts to a "*primâ facie* case" and is committed to the Sessions on these grounds.

No. 206. From the Government of India, Home Department, Judicial, to the Right Honourable the Earl of KIMBERLEY, K.G., Her Majesty's Secretary of State for India,—No. 9, dated the 9th February 1893.

In paragraph 7 of our Despatch No. 32, dated the 21st December last, in which we reported the result of our enquiries regarding the working of the jury system in this country, we noticed that we had not received any information from the Government of Bombay as to

the action which that Government had taken upon our letter of the 25th August last (Enclosure No. 13 of our Despatch of the 21st December) conveying our remarks on the question so far as the Bombay Presidency was concerned.

We now forward for Your Lordship's information a letter* which has just reached us from the Government of Bombay, with its enclosures, from which it will be seen that the Governor in Council would have proceeded to take action upon the reports and opinions which he has received from the Honourable Judges of the High Court and the other officers whom he consulted, but for the fact that the subject of the working of trial by jury in the *Mufassal* in this country is at present under the consideration of Her Majesty's Government.

* No. 614, dated the 27th January 1893.

2. Your Lordship will observe that the Honourable the Chief Justice and Judges of the High Court as at present constituted are unanimous in holding that the offence of murder and its abetment should be withdrawn from the cognizance of juries in the districts of Ahmedabad, Surat and Belgaum. When that Court reported on the question in its letter No. 2003, dated the 26th September 1890 (*vide* Enclosure No. 5 of our Despatch of the 21st December), this opinion was held and strongly expressed by the Honourable Justices Birdwood, Farran, and Telang. Of these three Judges the first is now a Member of the Governor's Council at Bombay, and the other two were absent on leave when the Court deliberated on the subject in January 1893. The result, therefore, is that in addition to the six Judges of whom the Court at present consists, and who, in forming the opinion at which they have arrived, have had the benefit of the active discussion to which the question has recently been subjected in the public press, three other Honourable Judges of much experience, one of them a Native of high eminence and long practice at the Bar, have expressed themselves emphatically in the same sense. It appears to us that with this concurrence of authority the question whether trial by jury should or should not be retained for capital cases in these three districts cannot be considered as any longer open to doubt.

From C. A. GALTON, Esq., Acting Chief Secretary to the Government of Madras, Judicial Department, to the Secretary to the Government of India,—No. 268 (Judicial), dated 6th February 1893. No. 207.

I am directed, with advertence to your letter, dated 25th August 1892 No. 1105, (Judicial), to communicate to the Government of India the views of the Honourable the Judges of the High Court upon certain points connected with the working of the jury system to which a reference is made in your letter under reply.

2. It will be observed that the Honourable the Judges are unanimous in deprecating the extension of the system of trial by jury to any classes of offences which are not at present triable in that manner, while, at the same time, they are of opinion that the system should not be withdrawn from any locality in which it is at present in force. Upon both these points the Government concurs with the High Court.

3. With the exception of Mr. Justice Best, all the Judges are also agreed that the system of trial by jury is unsuitable in the case of the offences of robbery and dacoity and they would exclude these offences from the list of those triable by jury. The Honourable Mr. Justice Best holds the same view in respect of all cases where the number of the accused exceeds three.

His Excellency in Council is disposed to concur with the majority of the Judges in thinking that robbery and dacoity are not offences which ought to be tried by jury.

4. The Government further agrees with the Honourable Mr. Justice Parker in holding that section 303 of the Code of Criminal Procedure might with advantage be amended so as to admit of the taking of special verdicts on particular issues of fact and the general credibility of particular evidence. This amendment was proposed in the first instance by Justices Birdwood, Telang and Candy of the Bombay High Court, and it is observed that the Government of India has noted the proposal for further consideration.

5. With regard to the remark in paragraph 6 of your letter under reply to the effect that the system of trial by jury was extended in a premature and wholesale manner to the Madras Presidency, I am directed to state that His Excellency in Council considers that this statement is not supported by the facts. In March 1862, the system was first introduced in

four districts; two more districts were added during the year; in 1870, the system was withdrawn from one district and up to 1879 it was in force in only five districts; in 1879 three more districts were added, and it was not until 1883 that, at the suggestion of the High Court, the system was extended to all parts of the Presidency except the Agency tracts. Thus the system was in restricted operation for twenty-one out of the thirty years which have elapsed since it was first tried.

No. 208. *Extract from the Proceedings of the Government of Madras, Judicial Department,—No. 267 (Judicial), dated the 6th February 1893.*

Read again—

G. O., dated 28th September 1892, Mis. No. 1827, Judicial.

Read again—

G. O., dated 9th July 1890, No. 1131, Judicial.

Read also the following paper :—

Letter from C. J. LYALL, Esq., C.I.E., Secretary to the Government of India, Home Department (Judicial), to the Chief Secretary to the Government of Madras,—No. 1105, dated 25th August 1892.

Order—dated 28th September 1892, Mis., No. 1827, Judicial.

The letter read above will be communicated to the Honourable the Judges of the High Court, with the request that they will favour Government with their opinions, together with the grounds for the same as to—

(1) Whether any change should be introduced as regards the jury system in any particular district of this Presidency;

(2) Whether any, and, if so, what, classes of cases now tried by juries should no longer be so tried.

No. 209. From H. W. FOSTER, Esq., Registrar of the High Court of Judicature, Appellate Side, to the Chief Secretary to the Government of Madras,—No. 3281, dated 9th December 1892.

In reply to G. O., dated 28th September 1892, No. 1827, Judicial (Confidential), I am directed to forward the minutes recorded by the Chief Justice and the Judges on the two points on which the High Court's opinion is asked.

2. I am to point out that as to the first question, whether any change should be introduced as regards the jury system in any particular district, the Judges are agreed that there is no necessity for any alteration.

3. On the second question, whether any classes of cases now triable by juries should be excluded from the list of cases so triable, with the exception of Mr. Justice Best, the Judges agree in recommending that offences punishable under sections 392 to 395 and 397 to 402 of the Indian Penal Code should be withdrawn from the cognizance of juries and left to be tried by the Court with assessors, while Mr. Justice Best considers it desirable to remove all cases in which the number of persons to be jointly tried exceeds three, whatever the nature of the offence, from the category of offences to be tried by juries.

4. The High Court is unanimous in considering it undesirable to extend the system of trial by jury to any class of offences to which it is not now applicable.

Minutes.

No. 210. *The Chief Justice.*—Two years have elapsed since I wrote the minute referred to and I am confirmed in the opinion I then gave that trial by jury in this Presidency is not satisfactory. I very strongly recommend that in all cases of robbery or dacoity the Sessions Judge

and assessors should try the accused. I do not think the proposal to allow the Sessions Judge to take special verdicts from jurors will be a success in the Madras Presidency.

Justice Sir T. Muttusami Aiyar.—We are asked to state our opinions on two questions. As to the first, I do not think it is necessary to introduce any change in the jury system as regards particular districts in this Presidency. I am aware of no local peculiarities which render such alteration desirable. As regards the second, it has long been my conviction that the juries accept too readily slender or unsatisfactory evidence of identification as sufficient for conviction in cases of robbery and dacoity, and these I would exclude from the list of offences cognizable by them throughout the Presidency.

Mr. Justice Parker.—I was absent in England when the opinion of the High Court was asked for in 1890 as to the suitability of the jury system in this country and desire now to take this opportunity of placing on record my concurrence with the opinion of the Chief Justice and the majority of the Court that the system is not satisfactory. The despatch of the Home Secretary now circulated makes it clear, however, that the Government of India is not at present prepared to abolish the system, and the opinion of the High Court is asked (1) whether any change should be introduced in any particular district, and (2) whether any, or, if so, what, classes of cases now tried by juries should no longer be so tried. On the first question, I would not recommend any change. On the second I think that offences falling under part III, chapter XVII of the Penal Code (of robbery and dacoity) should be excluded from the cognizance of juries. These offences—now triable by juries—are those punishable under sections 392—395, 397—402, Indian Penal Code. It is in dacoity cases that the verdicts of juries are specially unsatisfactory. I am not in favour of extending the jury system to offences relating to marriage (chapter XX, Indian Penal Code).

I am in favour of the amendment suggested to section 303, Criminal Procedure Code, so as to allow the Judge to take a special verdict on particular issues of fact, and I would also amend section 418, so as to allow an appeal on the facts in any case in which the Judge had thought it necessary to record his dissent from the verdict even though he had not felt himself bound to refer the matter under section 307.

With reference to the general question of the suitability of trial by jury to India and the affection alleged to be felt for the system, it is not immaterial to note that the States of Mysore and Travancore (which are under enlightened native administration) have abstained from introducing it, while making other parts of the Criminal Procedure Code applicable to these territories. The same course has been taken in the State of Pudukota, though that State is surrounded by the Tamil districts in which the system of trial by jury has been longest in force.

Mr. Justice Wilkinson.—Our opinions are asked for on two questions—

(1) I am not aware that the jury system has been extended to any area in the Madras Presidency to which it is unsuitable, or that any change is necessary in any particular district on account of local peculiarities.

(2) I am decidedly of opinion that offences falling under sections 392—402, Indian Penal Code, should be withdrawn from trial by jury. There is generally in such cases a large mass of evidence with which a jury composed of the material available in this Presidency is quite incompetent to deal. Evidence of identification, of the finding of property, and the weight due to confessions are points on which my experience shows juries are very apt to err.

Mr. Justice Handley.—As to the first question upon which our opinion is now asked, I am not aware of any reason for making a change in the jury system in any particular district of this Presidency. I consider the system equally unsuited to all the districts, and that, if any changes are made, they should be introduced uniformly in all districts to which the jury system is extended.

As to the second question, I am of opinion that offences punishable under section 392 to 395 and 397 to 402 of the Indian Penal Code should no longer be tried by juries.

Mr. Justice Best.—It is in cases in which a number of persons are being jointly tried that the jury system is (there is reason to fear) often a failure owing to the inability of the ordinary juryman to properly weigh the evidence against each of the accused. I would therefore make it a rule that no case in which the number of persons to be jointly tried exceeds *three*—whatever the offences—shall be tried by jury. I see no necessity for excluding cases of robbery or even dacoity in which the number to be tried at one time does not exceed three.

Modified as above, the offences now triable by jury in this Presidency might, I think continue to be so tried.

I do not think it advisable to extend the jury system to any other offences.

No. 211. *Extract from the Proceedings of the Government of India, in the Home Department (Judicial), —No. $\frac{5 \text{ (Judicial)}}{201\text{-}208}$, under date the 23rd February 1893.*

READ—

The correspondence on the working of the jury system in India, forwarded to the Secretary of State with the Government of India's Despatch No. 32, dated the 21st December 1892.

Further Despatches on the same subject, so far as it relates to Bengal, No. 1, dated the 4th January, and No. 5, dated the 18th January 1893.

A letter from the Government of Bengal, No. 35J., dated the 2nd January 1893.

RESOLUTION.—In a letter, No. 35J., dated the 2nd January 1893, addressed by the Lieutenant-Governor of Bengal to the Government of India, His Honour, with reference to the Notification issued by him on the 20th October 1892, withdrawing certain offences from trial by jury in eight districts of Bengal, wrote that he desired—

"as far as possible, to reconsider the question from the new light thrown on it by the fact that the distress and dissatisfaction caused by the partial removal of what is valued as an important privilege had been so great and so much beyond his expectation;"

And, after making various suggestions for the modification of the provisions relating to juries in the Criminal Procedure Code, His Honour concluded his letter in the words quoted below—

"A suggestion has been made to the Lieutenant-Governor that a Commission might be appointed with instructions to consider such questions as those indicated above, and to report to Government on the feasibility of any scheme which would be generally acceptable, and yet would safeguard the Government from a recurrence of the scandalous verdicts and grievous failures of justice to which at tention has been drawn in the published correspondence. There are obvious difficulties attending the appointment of such a Commission, but it seems not impossible that it might result in the formulation of an authoritative report which the Government could accept, and if such a result could be obtained, it would be more satisfactory and would tend more to re-assure the public mind than a decision arrived at by Government alone. The Lieutenant-Governor, therefore, thinks it his duty to submit this suggestion for the consideration of the Government of India, and to say that, should they accept it, nothing will be wanting on his part to afford the Commission such assistance as is in the power of the Bengal Government."

The suggestion thus made seemed to the Government of India well worthy of consideration, not only for the reasons which had been stated by His Honour, but also because the Governor General in Council was aware that the residents of the jury districts had made it a special ground of complaint that the Notification of the 20th October had been issued without their having been allowed an opportunity of showing cause against it. The following paragraph was, therefore, added to the Despatch of the 4th January, transmitting to Her Majesty's Secretary of State for India a memorial adopted by the public meeting held at the Town Hall of Calcutta on the 20th December, in which the memorialists protested against the Notification of the 20th October 1892:—

"Since the above paragraphs were written, we have received from His Honour a suggestion that if an enquiry is to be made into these points, it might be conveniently entrusted to a special Commission. Sir Charles Elliott's proposal, provided the scope of the enquiry is carefully defined, seems to us well worthy of consideration. We shall, however, take no further steps until we have heard from Your Lordship in reply to this and our former Despatch."

2. The Governor General in Council has now received from the Secretary of State an intimation that the course above proposed approves itself to Her Majesty's Government, and is in a position to issue orders on the subject. His Excellency in Council has decided to appoint a Commission, consisting of the following gentlemen:—

The Honourable Mr. Justice PRINSEP, *President.*
Maharaja Sir JOTINDRO MOHUN TAGORE, Bahadur, K.C.S.I.
The Honourable Sir GRIFFITH EVANS, K.C.I.E.
Sir ROMESH CHUNDER MITTER, KT.
Mr. C. A. WILKINS, Indian Civil Service, District and Sessions Judge.

The services of Mr. H. C. Streatfeild, of the Indian Civil Service, will be placed at the disposal of the Commission as Secretary.

3. The Commission will be instructed—

(1) to consider the classes of offences triable by jury in the several districts of Bengal in which the system of trial by jury has been introduced, and to report whether

any, and, if so, what, changes in the classification which now obtains are desirable;

(2) to consider and report whether any, and, if so, what, modifications of the provisions of the Criminal Procedure Code relating to the trial of offences triable by jury before Courts of Session are desirable for the purpose of preventing miscarriage of justice.

4. The whole of the correspondence which has recently passed on the subject of the working of the jury system in Bengal, and which is read in the preamble to this Resolution, as well as reports subsequently received from the Madras and Bombay Governments on the same subject, will be placed at the disposal of the Commission by the Government of India, and the Government of Bengal and the High Court of Calcutta will be requested to afford the Commissioners all the assistance in their power in the prosecution of their enquiries.

It will be left to the Commission to decide whether or not they should take oral evidence.

5. The Governor General in Council is desirous that the Commission's report should be submitted with as little delay as possible, and therefore considers it advisable that their sittings should commence at once, and be as continuous as they can arrange without inconvenience.

ORDER.—Ordered that a copy of this Resolution be forwarded to the Government of Bengal, to the Honourable the Chief Justice and Judges of the High Court at Fort William and the Members of the Commission, for information, and that it be published in the *Gazette of India*.

(True Extract.)

C. J. LYALL,

Secretary to the Government of India.

From P. G. MELITUS, Esq., Under Secretary to the Government of India, to the Registrar of the High Court of Judicature at Fort William in Bengal, No. 215, dated the 23rd February 1893. No. 212.

Home Department Resolution No. $\frac{5 \text{ Judicial}}{201-208}$, dated 23rd February 1893, on the subject of the appointment of a Commission to enquire into, and report upon, certain questions in connection with the system of trial by jury in Courts of Session.

I am directed to forward, for the information of the High Court, a copy of the paper noted on the margin.

From the Government of India, Home Department, to the Right Honourable the EARL OF KIMBERLEY, K. G. Her Majesty's Secretary of State for India,—No. 10, dated 1st March 1893. No. 213.

In continuation of our Despatch No. 9, dated the 8th February 1893, with which we forwarded a communication received from the Government of Bombay on the subject of the working of trial by jury in that Presidency, we have now the honour to transmit a letter† on the same subject from the Government of Madras. This letter, though dated the 6th, only reached us on the 22nd February. It will be seen that the Honourable Judges of the Madras High Court are unanimous in thinking it undesirable to extend the system of trial by jury to any class of offences not at present so triable in that Presidency, and that, with the exception of Mr. Justice Best, the Honourable Judges are also unanimous in recommending that the offences of robbery and dacoity should be withdrawn from the cognizance of juries, on the ground that (to quote the Honourable Sir Muttusami Aiyar) in these classes of cases "juries too readily accept slender or unsatisfactory evidence of identification as sufficient for conviction." The dissentient Judge considers it desirable to remove all cases in which the number of persons to be jointly tried exceeds three, whatever the nature of the offence, from the category of offences to be tried by juries.

† No. 268, dated the 6th February 1893.

From C. J. LYALL, Esq., C. I. E., Secretary to the Government of India, to the Chief Secretary to the Government of Madras,—No. 256, dated 4th March 1893. No. 214.

I am directed to acknowledge the receipt of your letter No. 268, dated the 6th February last, forwarding copies of the opinions recorded by the Honourable Judges of the High Court regarding the working of the system of trial by jury, and communicating the views of the Madras Government on the subject.

2. In reply I am to say that, as the Madras Government are aware, the subject of trial by jury is already under the consideration of Her Majesty's Government in communication with the Government of India. A Commission has just been appointed, with the approval of the Secretary of State, to consider the classes of offences triable by jury in the several districts of Bengal where the system prevails, and to report whether any, and if so, what, changes in the

classification which now obtains are desirable; and the same Commission will also consider and report whether any, and, if so, what, modifications of the provisions of the Criminal Procedure Code relating to the trial of offences triable by jury before Courts of Session are desirable for the purpose of preventing miscarriage of justice. The enquiries of the Commission will not extend to the Madras Presidency, but a copy of the papers forwarded with your letter under reply has been supplied to them; and meanwhile I am to say that, pending their report and its consideration by the Government of India and the Secretary of State, it would not be convenient that any action dealing with the classification of offences triable by jury should be taken by His Excellency the Governor in Council in the territories subject to his administration.

No. 215. From C. J. LYALL, Esq., C. I. E., Secretary to the Government of India, Home Department, to the Secretary to the Government of Bombay, Judicial Department,—No. 257, dated 4th March 1893.

I am directed to acknowledge receipt of your letter No. 614, dated the 27th January last, forwarding copies of the opinions recorded by the Honourable Judges of the High Court at Bombay and by District Officers in the Bombay Presidency regarding the working of the system of trial by jury, and enquiring whether any further direction from the Government of India should be awaited before His Excellency the Governor in Council takes into consideration the questions of the necessity for an amendment of the present system and of the policy of extending it.

2. In reply I am to say that, as the Bombay Government are aware, the subject of trial by jury is already under the consideration of Her Majesty's Government in communication with the Government of India. A Commission has been appointed, with the approval of the Secretary of State, to consider the classes of offences triable by jury in the several districts of Bengal where the system prevails, and, to report whether any, and if so, what, changes in the classification which now obtains are desirable; and the same Commission will also consider and report whether any, and if so, what, modifications of the provisions of the Criminal Procedure Code relating to the trial of offences triable by jury before Courts of Session are desirable for the purpose of preventing miscarriage of justice. The enquiries of the Commission will not extend to the Bombay Presidency, but a copy of the papers forwarded with your letter has been supplied to them; and meanwhile I am to say that, pending their report and its consideration by the Government of India and the Secretary of State, it would not be convenient that any action dealing with the classification of offences triable by jury, or giving any further extension to the system, should be taken by His Excellency the Governor in Council in the territories subject to his administration.

No. 216. From the Right Honourable the EARL OF KIMBERLEY, K. G., Her Majesty's Secretary of State for India, to the Government of India,—No. 8 (Judicial), dated the 16th February 1893.

I have had before me in Council, and have given my most careful consideration to the telegram and Despatches (with their enclosures) noted in the margin, in which you state and explain your views as to the recent action of the Lieutenant-Governor of Bengal with regard to the list of offences cognizable by juries in certain districts of that Province.

Telegram from Viceroy, 16th January 1893, Judicial Despatches from Government of India, dated 21st December 1892, No. 32, and the 4th and 18th January 1893, Nos. 1, 3 and 5.

2. The Notification by which the Lieutenant-Governor withdrew from that list certain classes of offences was issued by him, in the exercise of his statutory powers, on the 20th October 1892, and the first communication on the subject which reached this Office was dated 9th November, and was received on the 28th of the same month.

3. In view of the very great importance which is rightly attached to the institution of trial by jury, both in this country and in India, and of the extreme jealousy with which any modifications of the system are naturally regarded, I should have been glad if an opportunity had been afforded me of expressing my opinion before any final step was taken. For the same reason, I was anxious to deal with the matter was promptly as possible; but, although I have had it constantly before me, I as unable to come to any decision until I should have received the final letter which Your Excellency requested me to await. That letter has now arrived, and I am therefore able to put you in possession of my opinion without further delay.

4. The decision of the Lieutenant-Governor of Bengal was based (1) on statistics showing the proportion of cases in which the verdicts of juries in Bengal had failed to command the assent of the judges, and (2) on the opinions of a large number of persons, judges, and others

who had been concerned in the administration of the law. These statistics and opinions reached me in November; I have therefore had time to consider them very carefully, and the conclusion to which I have come is that, while they indicate the existence of defects and difficulties in the working of the jury system in Bengal, they are not such as to justify the measure announced in the Notification of the 20th October.

5. It is, however, unnecessary for me to assure Your Excellency that I at all times attach great weight to the opinion of Your Excellency's Government, which, in this case, is in agreement with that of Sir Charles Elliott; and I may add that it is obviously most desirable that a question of such importance, on which high authorities hold divergent views, should not be decided without full investigation of all that bears upon it. I have therefore resolved to adopt the suggestion of the Lieutenant-Governor, contained in Mr. Cotton's letter of the 2nd January, and recommended to me in Your Excellency's telegram of the 16th January, that a Commission be appointed to consider and report upon the subject.

6. It is true that the statistics to which I have referred cannot, so far as I am aware, be challenged or modified, and, with regard to the inference to be drawn from them, I have in a previous paragraph expressed my views. But it is possible that a Commission, taking account of all the circumstances, and of the strong feeling which interference with the system of trial by jury inevitably evokes, may be able to give advice of great value to Your Excellency's Government and to myself.

7. I have, therefore, by telegram * authorized Your Lordship to take steps at once for the appointment of such a Commission, to inform me of the names of the persons whom you propose to select as members and, after receiving my approval, to arrange that their deliberations may begin immediately and may be continued with as little intermission as possible. I have further to request that, when Your Excellency shall have received their report, you will forthwith communicate it to me, and will inform me as to the measures which you propose should be taken upon it.

* Of this day's date.

From H. C. STREATFIELD, Esq., Secretary to the Jury Commission, to the Secretary to the Government of India,—dated the 24th March 1893. No. 217.

I am directed by the President of the Commission appointed by the Resolution of the Government of India, No. 5 $\frac{\text{(Judicial)}}{\text{201-208}}$, dated 23rd February 1893, to consider and report on certain matters connected with the working of trial by jury in Bengal, to submit the enclosed Report of the Commission for the orders of the Government of India.

Report of the Commission appointed to consider and report on certain questions connected with trial by jury in Bengal. No. 218.

We, the undersigned, have been appointed by the Government of India by a Resolution dated the 23rd February 1893, as Commissioners,

(1) to consider the classes of offences triable by jury in the several districts of Bengal in which the system of trial by jury has been introduced, and to report whether any, and, if so, what changes in the classification which now obtains are desirable;

(2) to consider and report whether any, and, if so, what modifications of the provisions of the Criminal Procedure Code relating to the trial of offences triable by jury before Courts of Session are desirable for the purpose of preventing miscarriage of justice.

2. We have read and considered the papers mentioned in the Resolution as well as papers placed at our disposal by the Government of Bengal and obtained from the High Court. These are specified in a schedule attached to this Report. We have anxiously considered whether we should be materially assisted by the examination of witnesses, but, having regard to the ample information furnished by the large mass of official papers and statistics before us, supplemented by our own experience and knowledge of the subject, we have felt that the taking of oral evidence would not adequately compensate for the delay that it would necessarily entail.

3. Before proceeding to report the conclusions at which we have arrived, it is desirable that we should state briefly the origin and history of trial by jury in the Criminal Courts of Bengal outside the presidency town of Calcutta, so as to show more clearly the grounds upon which our opinions have been formed.

i. Until the 1st of January 1862, when the Code of Criminal Procedure (Act XXV) of 1861 and the Indian Penal Code (Act XLV of 1860) came into operation, there was no regularly defined procedure in those Courts, and the law administered, except where specially defined in regard to certain offences, was involved in some uncertainty.

ii. In 1793, Regulation IX was passed establishing certain Criminal Courts in Bengal under certain rules. Trials before the Courts of Session were held by an European Judge associated with a Mahomedan Law officer, whose duty it was at the conclusion of the trial to deliver his *futwa* or exposition of the Mahomedan law applicable to the case. The law administered under the Mahomedan Criminal Code was modified from time to time in regard to certain offences by successive Regulations passed under the authority of Government to supply defects found to exist therein.

iii. Regulation VI of 1832 for the first time left it to the option of a Sessions Judge to dispense with the *futwa* of the Mahomedan law officer, and enabled a person under trial, who did not profess the Mahomedan faith, to claim exemption from trial under the Mahomedan Criminal Code, and in such a case the trial was to be held without the *futwa* of the law officer and under one of three procedures described by that Regulation:

(*a*) The Sessions Judge might refer the case, or any point or points in it, to a Panchayet of respectable natives, who were empowered to carry on their inquiries "apart from the Court" and report to it the result; or

(*b*) The Sessions Judge might constitute two or more such persons assessors or members of the Court. These persons were required to give their opinions separately for discussion, and if any of the assessors or the Sessions Judge so desired it, the opinions of the assessors were to be recorded in writing on the proceedings; or

(*c*) The Sessions Judge might employ such persons "more nearly as a jury." It was left to the discretion of the presiding Judge to select the jurors, and to fix the number to be employed, and the manner in which their verdict was to be delivered. After consultation, a verdict was to be delivered; but it was provided that, in all cases, the decision was vested exclusively in the presiding Judge.

If the *futwa* of the law officer was, in a trial so held, dispensed with, and the crime of which the prisoner was convicted was one not specially provided for by the Regulations, the Sessions Judge was not competent to pass sentence, but was directed to refer the case for the consideration of the Nizamut Adawlut. Trial by jury, therefore, under this Regulation, was a very different matter from what the use of that term would ordinarily imply, and we may add that this mode of trial was very seldom adopted.

iv. In 1859, on the Report of the Indian Law Commissioners, the Bill to introduce a Code of Criminal Procedure came before the Legislative Council of India. The Report of the Select Committee was considered by the Secretary of State for India in Council, who, on the 31st December 1859 communicated the following despatch on the subject of the introduction of trial by jury in the form and to the extent proposed in the Report of the Select Committee:—

* * * * * * * *

"4. The Law Commissioners appointed under the Indian Act of 1853 proposed to retain the mode of trial by jury in the presidency towns, and in the case of British subjects in the mofussil; to extend it to certain other classes in the mofussil who have not hitherto enjoyed it; and to leave it to the discretion of the Government to extend it to such other places out of the presidency town as it may think fit. All other trials before the Sessions Courts were to be conducted with the aid of two or more assessors as members of the Court.

"5. In jury-trials the verdict of the jury was to be binding on the Court. In trials with the aid of assessors the decision was to be vested exclusively in the Judge.

"6. The course proposed by the Commissioners appears to Her Majesty's Government to have been a very safe and judicious one. Under a system intended to be ultimately adapted to the whole of India, including the presidency towns, it was necessary to secure the binding nature of the verdict of a jury as to matters of fact. This was done, and the trial by jury was to be at once extended as far as it appeared to the Commission it could be safely done by a mere act of the Legislature. Beyond this it was proposed to associate natives of the country as assessors with the Judge, in conducting criminal trials, and thus to prepare them for taking hereafter a more decided and efficient part in the administration of criminal justice than they now appear to be prepared for; and in such cases the decision was to be left with the Judge in order to provide against failures of justice arising out of religious or other prejudices.

"7. The Code as prepared by the Commissioners was laid before the Legislative Council and referred to a Select Committee, who struck out the provision respecting assessors, thus providing for a general system of trial by jury.

"8. The members of the Select Committee, however, appear to have had their misgivings on this subject; and they accordingly inserted a clause to the effect that the Sudder Court should have the power of overruling the verdict of a jury, because, said Mr. Harrington in the Legislative Council, 'there was a difficulty in making any other provision without giving a power to native jurors, with which, for the present at least, it was thought that they could not be safely entrusted.'

"9. The clause proposed by the Select Committee was struck out by the Council, and the Bill as now approved by them places the whole of the territories in India, in which the Codes of Bengal, Madras, and Bombay prevail, under a system of trial by jury, the unanimous verdict of the jury being final and conclusive on questions of fact.

"10. Her Majesty's Government are of opinion that the course recommended by the Law Commissioners should be followed, that trials in the Sessions Courts should be generally conducted with the aid of assessors, and that trial by jury being settled by law in regard to certain classes, it should be left to the Government to extend it to localities as it may deem fit. Whatever objections there may be to such a course they appear to Her Majesty's Government to be far less than those which exist to the introduction of a general system of criminal administration for which the country is not prepared."

The Legislative Council accordingly modified their recommendations and the Bill which became Act XXV of 1861 was passed, and came into operation on the 1st January 1862. Under section 322, the Local Government was empowered to order that the trial of all offences, or of any particular class of offences, by any Court of Session should be by jury in any district, and from time to time to revoke or alter such order. It was also empowered to direct that the jury in such trials should consist of five persons or of such number, being an uneven number, and not being less than five or more than nine, as it might direct in respect of any particular district or of any particular class of offences in that district. Accordingly the Government of Bengal fixed seven as the number of all juries in such trials, and also in the course of 1862 directed that trials should be held by jury in the Sessions Courts of the Districts of 24-Parganas, Hooghly, Burdwan, Murshidabad, Nadia, Patna, and Dacca in respect of offences under the following chapters of the Indian Penal Code :—Chapter VIII (*Offences against the Public Tranquillity*); Chapter XI (*False Evidence and offences against Public Justice*); Chapter XVI (*Offences affecting the Human Body*); Chapter XVII, (*Offences against property*); Chapter XVIII (*Offences relating to Documents and to Trade or property marks*); and also abetments of, or attempts to commit, any of those offences. Under section 328, in order to constitute a legal verdict the jurors were to be unanimous, or if the jury consisted of five persons a majority of four, if of seven a majority of five, if of nine a majority of six, was necessary. In the event of a majority of a smaller number the jury was to be discharged and a new trial was to take place, and if, on such new trial, a verdict by a legal majority was not obtained, the accused person was to be acquitted (section 351). The verdict of the jury was final, except on a point of law—that is, on misdirection, established on the part of the Sessions Judge.

v. The Code of Criminal Procedure came under revision by the Legislative Council in 1870, and in introducing the Bill the Honourable Mr. (now Sir) J. F. Stephen, on the 9th December 1870, made the following observations:—

"The third and last alteration was with regard to trial by juries the provisions regarding which appeared t obe complicated. There were certain specified majorities which might convict a man of an offence, if a smaller majority wished to convict, the prisoner might be tried again. The Indian Law Commissioners observed that this was an extremely intricate way of proceeding, and that the concurrence of the Judge was a far better guarantee of the justness of the conviction than any specified majority of jurors; and the Bill was altered accordingly thus:—that if not less than two-thirds of the jury convicted a man, and if the Judge agreed with them, the accused was to be convicted; if there was not such a majority, or if the Judge did not agree with them, the accused would be acquitted."

Mr. Stephen then proceeded to state that according to his views trial by jury *primâ facie* was an institution unsuited to such a country as India, and he asked for information as to its working since 1862.

The reports of the local authorities consulted expressed a good deal of dissatisfaction with trial by jury in the seven districts of Bengal. The Select Committee of the Legis ative

Council, on consideration of those reports, in their preliminary report on the Bill thus dealt with the subject: —

Resolution III.—We think that if the jury system in the mofussil is to be maintained, the Judge should, in cases in which he differs from the jury, have power to refer the case to the High Court, and that the High Court should be empowered to pass final orders in the case.

On the 30th January 1872, the Honourable Mr. Stephen, in presenting the preliminary report, made the following observations:—

"The third Resolution had reference to a question which was referred to the Local Governments when this Bill was introduced; it was a question connected with the jury system in the mufussal. The jury system, as the Council were aware, was introduced by the Criminal Procedure Code passed in 1861. It was then felt to be an experiment, because the whole system of trial by jury implied the existence of a state of things which was peculiar to a community of Englishmen, or a people with English ideas, and if it did succeed it would succeed, in spite of difficulties peculiar to India. The Committee had considerable doubts as to the course which ought to be taken in regard to the jury system in the mufussal and whether it ought to be maintained at all. There was, however, one point upon which they felt clear. They thought that the Judge, in cases in which he differed from the jury, should have power to refer the case to the High Court, and that the High Court should be empowered to pass final orders. In trials by jury, a degree of finality attached to the verdict which attached to the decisions of no other tribunal in the country, and which was entirely opposed to the general spirit of the administration of justice in India. If a man was convicted before a Sessions Judge he had an appeal to the High Court, where they discussed the whole matter, and if they thought justice had not been done they would reverse the decision. In England this could not be done, and the effect was that an irregular appeal to the Home Secretary was in practice allowed, by which the ends of justice were often defeated. Here if a jury convicted, their verdict was absolutely final, and the only remedy available when a man was unjustly convicted in that way was a petition to the Local Government or to the Governor General in Council, as the case might be, for the exercise of the prerogative of mercy. That was a power to which Mr. Stephen thought there was the very strongest possible objection; the administration of the law was one thing, and the exceptional setting aside of the law was quite a different thing. He admitted that there might be exceptional cases where, owing to peculiar circumstances, it would be proper for the Government to interfere to mitigate sentences which the Judge was bound to pass. But it appeared to Mr. Stephen altogether improper that a man should be permitted to say 'The Judge thinks I am guilty, but I tell you that I am innocent.' Substantially that was an appeal; but it was an appeal to a person who ought not to accept the appeal; such questions ought to be left to the judicial authorities. The information before the Committee upon this subject, and the experience of the members of the Committee, led strongly to the conclusion that failures of justice resulted from this circumstance."

A further report was made by the Select Committee on this subject:—

Paragraph 9.—As to Resolution III we do not recommend the abolition of the jury system, but we think that the opinion of a majority of the jurors with the concurrence of the Judge should decide the case, and that, if a Judge differs from the verdict of the majority of the jury, he should have power to refer the case to the High Court, which may pass such order thereon as it thinks fit.

vi. On the 16th April 1872, the Honourable Mr. Stephen, in presenting this report, accepted the suggestions of the Select Committee and made the following observations:—

"I am aware that some of my honourable colleagues think that we have changed the spirit of the whole system so much by these alterations, that it would have been better to sweep it away altogether. I cannot myself think so. I certainly should not have suggested the introduction of the jury system into India if I had not found it here, and I cannot say that the opinions given of it by those who have had experience of its working are at all favourable. They were not, however, so altogether unfavourable as to induce us to take the step of recommending its total abolition. In giving the Judge power to refer to the High Court cases in which he differs from the jury, we have no doubt made a considerable alteration upon English precedents. But the alteration, if adopted, will be entirely in harmony with the whole spirit of Indian criminal procedure, the very essence of which is control and supervision by one set of Courts over another. We do not, of course, mean that the Judge should act in this manner in every case in which he has doubts as to the propriety of a verdict or even in those cases in which he feels that, if he had been a juror, he would not have returned

the same verdict. Our intention is, that he should exercise the power in question in those cases only in which it is necessary to do so in order to prevent a manifest failure of justice; and having regard to the strong motive which the Judge always has for avoiding all future trouble by accepting the view taken by a jury, I think there is little reason to fear that the power will be abused."

And the Lieutenant-Governor of Bengal, Sir George Campbell, said:—

"Another subject to which he would draw the attention of the Council was the difficult subject of juries. It was His Honour's opinion that, in this country, juries framed on an English model were not altogether beneficial instruments in the administration of criminal justice; at the same time he had not been willing to abandon the jury system altogether, because, although he did not think that trial by jury was an unmixed good, he believed that the system had a great effect on the political education of the people. It was a great very object to induce the natives of the country to take a part in self-government and in the administration of justice, and it was in that respect only that he regarded the maintenance of the jury system in criminal trials to be of some value."

vii. The Code of 1872 modified that of 1861 in respect of the finality of the verdict of a jury. Section 263 declared that—

"If the Sessions Court does not think it necessary to dissent from the verdict of a majority of the jurors, it shall give judgment accordingly . . . If the Court disagrees with the verdict of the jurors and considers it necessary for the ends of justice to do so, it may submit the case to the High Court, and may either remand the prisoner to custody, or admit him to bail. The High Court shall deal with the case so submitted as with an appeal, but it may convict the accused person on the facts, and if it does so, shall pass such sentence as might have been passed by the Court of Session."

viii. (An unimportant alteration in expression amounting to more accurate drafting was made in 1874, together with some other amendments in the Code which we need only mention in passing to the real matters in issue.)

ix. It will be observed that, while the Legislature enabled the Sessions Judge to suspend the verdict of a jury by submitting the case for the orders of the High Court, it permitted a verdict by a bare majority of the jurors,—that is, by a majority of one juror. The Legislature apparently considered that if the Sessions Judge did not so disagree from the jurors, it was not necessary to have the absolute majority provided for by the Code of 1861. The orders of Government regarding the offences triable by jury, and the districts in which such trials were to be held, remained unaltered. The number of the jurors was in 1873, with the concurrence of the High Courts, reduced from seven to five.

x. The Code of Criminal Procedure came again under discussion before the Legislative Council in 1881, and the system of trial by jury again became the subject of many reports, which were duly considered by that Council. But still, though those reports were not altogether favourable, no alteration was made in the Code of 1872, with the exception of a slight alteration of section 263. Instead of the words quoted above, the corresponding section (307) of the Code of 1882 provided—

"If in any such case the Sessions Judge disagrees with the verdict of the jurors or of a majority of the jurors, on all or any of the charges on which the accused has been tried, so completely that he considers it necessary for the ends of justice to submit the case to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and when the verdict is one of acquittal, stating the offence which he considers to have been committed." It was further provided that,

"in dealing with the case so submitted the High Court may exercise any of the powers which it may exercise on an appeal, but it may acquit or convict the accused of any of the offences of which the jury could have convicted him upon the charge framed and placed before it, and if it convicts him, may pass such sentence as might have been passed by the Court of Session."

xi. On the 17th July 1884, the Government of Bengal asked the opinion of the High Court whether it was desirable to introduce trial by jury into certain other districts mentioned. After stating that the seven districts had been selected by the late Sudder Court on the ground that the intelligence of the residents was higher than that of the residents of other districts, and that the means of education existing in them, or in their immediate vicinity, would enable the better class to qualify themselves thoroughly to take part in the administration of justice, the letter from the Government of Bengal proceeded in these terms:—

"3 The reports submitted by District Magistrates and Commissioners of Divisions on the working of the system during the first years of its introduction were not favourable. The

Commissioner of Dacca stated that he had no confidence in the jury system so far as that division was concerned, and he was of opinion that justice would be defeated in the more important trials by its application to them, though it might work well in unimportant cases where the parties were poor and insignificant. The Commissioner of the Presidency Division thought the country was not sufficiently advanced for the introduction of the system, as, in his opinion, even the higher classes of the people, with the exception perhaps of those siding in the immediate vicinity of the metropolis, were unfit for the duty of jurors, not so much by reason of their education as on account of their peculiar religious tenets, and their more cherished feelings and prejudices, and where these objections did not exist, there was another not less important,—*viz.*, their ignorance of the first principles of the law of evidence. The Commissioner proposed that Judges should be vested with the power of selection and rejection, not of persons, but of classes, so that where there was reason to believe that a Brahmin might be, on religious grounds, acquitted solely through the religious scruples of Hindus, or a failure of justice might be apprehended from the existence of party feeling, the Judge might form a mixed jury of Mahomedans, Hindoos and Eurasians or Europeans, so that no one religion or class should largely predominate. He considered that if this were done, and if greater care were taken in testing the qualifications of the persons selected to serve as jurors, and a clear summing up of the facts of the case were laid before the jury, the chief evils complained of would be remedied. The Commissioner of Burdwan, while prepared to see failures of justice in places where an unusual question arose or differences existed, was of opinion that the system was one of good promise, but that it ought to be gradually and discreetly introduced. The Commissioner of Patna concurred with the Magistrate of Patna in thinking that the natives of India were not, as a body, sufficiently enlightened, either morally or intellectually, to hold the important position of jurors, and he observed that the sooner trial by jury was abolished, in Patna at least, the better it would be for the administration of justice.

"4. The reports of the Sessions Judges of the 24-Parganas and Nadia, copies of which were forwarded with the High Court's letter No. 3325, dated the 29th November 1864, were more favourable to the system.

"The Judge of Nadia expressed his decided opinion that it had worked well, although there were a few cases in which the verdict of the jury had been directly against the evidence adduced. From his actual experience of the trials in his court, he was satisfied that the presence of a jury in criminal cases had been of essential assistance to himself, and was regarded by the natives themselves as a safeguard against errors of judgment and a guarantee that all the details in a case would be fully understood before any conclusion was formed; and he observed—'Whatever confidence a native may have in the strict and unswerving impartiality of the European Judge, I am not so satisfied that he ever places the same reliance in his power to comprehend all the intricate details which are involved in a difficult case where only natives are concerned, and it is just in these cases, specially where questions of caste, and questions involving family disputes, and native social life and manners, are constantly arising, that a jury taken from the body of the community and intimately acquainted with the ordinary transactions of native life are in the best position for giving most material assistance to the Court.' The Judge of Nadia therefore felt sure that the abolition of trial by jury would be a retrograde measure; and he added, 'Every year I hope to see an improvement of what, in its present stage, can only be regarded as an experiment; and while no institution could be better devised for leading the people to think and act more independently for themselves, to rely less upon the opinions and assistance of others, and to trust more to their own energies and exertions, we shall find that the diffusion of the knowledge of the laws, in the practical administration of which they take so responsible a part, will produce a more intelligent attachment on the part of the natives to the Government under which they live.'

"The Judge of the 24-Parganas considered the jury system to be unsuitable to the existing state of affairs, but he did not think it advisable to abolish it after so short a trial. He was in favour rather of retaining the system and of endeavouring to improve it by amending the jury list. He proposed having on every trial a mixed jury of Europeans and Eurasians with natives, and that the jury should be composed of five instead of seven members.

"The Honourable Judges of the High Court were of opinion that a certain measure of success had attended the introduction of the system, notwithstanding a few instances in which verdicts had been given palpably against the weight of the evidence, and from which, in consequence, a failure of justice had resulted. While, however, expressing generally their opinion that the system had not proved unsuccessful, the majority of the Honourable Judges were not prepared to advise its extension to other districts, or to crimes other than those specified in the chapters of the Penal Code to which it had been applied. They were of opinion that, looking

to the increased facilities of travelling both by land and water, the radius from within which jurors were drawn might be properly and advantageously extended to 15 or 20 miles instead of 10 miles, the distance from the Court-house to which it was restricted, and that a reduction in the number of the jury from seven to five would conduce not only to the convenience of the persons liable to serve as jurors, inasmuch as their services would be less frequently required, but also to the improvement of the system itself by the concentration of responsibility in a smaller number.

"5. On a review of the reports summarised above, the Lieutenant-Governor (Sir Cecil Beadon) came to the conclusion that although there had been a few cases in which a failure of justice had resulted from the perversity, prejudice, or want of intelligence of the jury, yet the experiment had succeeded to an extent which was scarcely to be anticipated, and that, on the whole, the jurymen had discharged their duties intelligently and conscientiously. Sir Cecil Beadon was of opinion that in the face of the testimony to the beneficial working of the system in Nadia borne by the Sessions Judge, who have evidently given the subject very serious thought, there was not sufficient ground for suspending trial by jury in that district, as had been proposed and that, to abolish or suspend it in any district into which it had been introduced in respect to any particular class of offences to which it had been made applicable, would be open to very serious objection. At the same time, there appeared to him to be sufficient grounds for not introducing the system into other districts until it had been tested for a longer period in the districts in which it was then in force. With a view to the improvement of the system, the radius of the area of selection was extended to 20 miles in the case of Krishnaghur, Patna, and Burdwan, and to 15 miles in the case of the sudder stations of the other jury districts, and the Commissioners were asked to have the jury lists carefully revised by Collectors, and to see that the duty of a juror was made as little harassing as possible. The Lieutenant-Governor was of opinion that, in order to render the system applicable under all circumstances to the districts into which it had been, or into which it might hereafter be, introduced, provision should be made by law for empannelling a special jury whenever the Sessions Judge might think it necessary for the ends of justice to adopt this course; and also that the time had arrived when an attempt might be made to prevent access to the jury during the progress of the trial. He was not disposed to accept the recommendation of the High Court for reducing the number of the jury from seven to five.

"6. In their report on the criminal administration of the Regulation Districts of Bengal for the year 1865, the High Court remarked that the jury system had worked well in the districts into which it had been introduced in 1862. They observed that its success must of course depend partly upon the proper selection of persons to form the list of a district, but mainly upon the ability and care with which the presiding Judge performed his duty of setting before the jury the evidence adduced, its legal value, and its bearing upon the crime of which the parties were charged, and they therefore strongly urged the importance of invariably selecting the most experienced and efficient officers at the disposal of the Government to serve as Judges in the jury districts.

"7. In February 1867, Sir Cecil Beadon, before severing his connection with the Government of Bengal, recorded his deliberate and mature conviction, founded on long experience and observation, and specially on the results of the system in the Lower Provinces, so far as it had been acted upon, that the trial of all offences before the Courts of Session, in all parts of these Provinces, ought to be by jury; and that the system might be universally adopted not only without prejudice to the administration of criminal justice, but with decided benefit to the courts, and with increased confidence on the part of the public in their judgments. He observed that it had been his invariable aim to select the most efficient, and generally the most experienced, officers at his disposal, to serve as Judges in the jury districts, and that it might be in some degree owing to the care with which the selection of Judges had been made that the system had been so entirely successful as far as it had been introduced. He added that, even if there were one or two Judges on the mufussal bench who were not fully competent to direct a jury, it seemed to him that the circumstance ought not to operate against the general introduction of a measure believed otherwise to be expedient. The Government of India coincided generally in the views expressed by Sir Cecil Beadon, but they were not in favour of the extension of the system suggested by him, as they preferred that its extension should depend in the main upon the assured capacity of the Judges available.

"8. In their Registrar's letter No. 512, dated the 6th May 1867, the High Court communicated their views on the following points in connection with the working of the jury system:—

"(1) Whether the system should be extended to any districts besides those in which it was in force,

"(2) Whether it should be extended to any other offences besides those to which it had been made applicable in certain districts.

"(3) Whether any provision should be made for the empannelling of special juries.

"(4) Whether it was desirable to frame rules for preventing access to juries during the progress of trials.

"The High Court observed that they had had another year's experience of a system which was still new to the country, and that results had not been sufficiently encouraging to warrant them in recommending its extension either to new districts or to other classes of offences than those to which it had in some districts already been applied. With reference to the third point, the Court were of opinion that the preparation of special jury lists was undesirable by reason of the difficulty which was already experienced in keeping up the lists of persons qualified to act as common jurors in mufussal stations; and that any measure which was calculated to diminish the number of common jurors, or to lower the standard of intelligence required of them, should be avoided in a country where the system was still upon its trial. As regards the fourth point, the Court were very decidedly opposed to the adoption of any such measure as the framing of rules for the seclusion of juries during the progress of trials. With the exception of the Commissioner of the Presidency Division, all the Commissioners of Divisions, who were asked for their opinions on the points specified above, were opposed to the system of trial by jury.

"9. The attention of the Government having been drawn to certain cases in which there had been a failure of justice, owing to the action of the juries which tried them, the Honourable Judges of the High Court were asked, in July 1871, for an expression of their opinion as to whether the system should be continued or not; and if not, whether it should be abolished or modified, and if modified in what particulars. In reply, the High Court forwarded the opinions of nine of the most experienced Session Judges, seven of whom were opposed to the system, together with a minute by Mr. Justice Jackson, which was concurred in by the Judges of the English Committee. The High Court were not prepared to recommend the removal of any district where it prevailed from the operation of the system; and with regard to any change in the class of offences triable by jury, they stated their willingness to express their opinion upon it, should circumstances arise indicating the need of change.

"10. Mr. Justice Jackson was of opinion that in cases where popular superstitions, prejudices or predilections operated for or against the accused, it was very unlikely, or at best it was far from certain, that the verdict would be in accordance with the evidence. He observed that it was notorious that in some districts a jury would convict a man charged with dacoity on the slightest evidence, while in many cases it was extremely difficult to obtain a verdict of guilty in cases of perjury and even of forgery. Juries would often acquit, in the face of the clearest proof, rather than run the risk of conducing to a capital sentence, and more especially if the crime had arisen out of conjugal infidelity, and in some places it was next to impossible to obtain from Hindu jurors the conviction of a Brahmin. For these reasons, Mr. Justice Jackson strongly urged the necessity of amending the law in the direction of enabling the presiding Judge, whenever he disapproved the verdict of the jury to refer the case for final orders to the High Court. He also thought that the number of jurors (*viz.*, seven) prescribed by Government was unnecessarily large, and should be reduced. With these modifications he considered that the system might be maintained, and that it was too late to withdraw entirely a boon which had been granted ten years previously, and which was capable of being continued if proper safeguards were employed. These recommendations were substantially adopted in the Criminal Procedure Code of 1872. Under the Code of 1861 (sections 328 and 352) convictions and acquittals could be obtained only when there were certain fixed majorities in the jury. Under section 263 of the Code of 1872, a Sessions Judge was empowered to refer for the decision of the High Court any case in which he considered the verdict of the jury to be subversive of the ends of justice, and under section 236 the minimum number of the jury was reduced from five to three. No important changes in the system have been made in the Code of 1882; the only new provision being that in section 304, which empowers a jury to amend its verdict.

"11. Without going so far as to pronounce the system of trial by jury to have been anything like a complete success, the Lieutenant-Governor thinks that it has worked fairly well in the more advanced districts to which it has been applied. Occasionally, no doubt, bad verdicts have been given by juries and miscarriages of justice have resulted; but since 1872, when, at the suggestion of Mr. Justice Jackson, the law was amended and a reference to the High Court allowed in cases in which the presiding Judge considered the verdict given to be wrong, these have decreased in number, and one of the faults of the system at

present seems to be that Sessions Judges do not make use of the power thus conferred upon them as often as they should. It will be seen from paragraph 7 of this letter that Sir Cecil Beadon advocated the extension of the system to all the districts of the Lower Provinces so far back as 1867, when it had been in force for only five years. This proposal was apparently abandoned in deference to the view which had been expressed by the High Court that a longer trial should be given to the system in the districts into which it had been originally introduced. Upwards of fourteen years have elapsed since Sir Cecil Beadon's Resolution of February 1867 was recorded, and Mr. Rivers Thompson thinks the time has now come when the matter might, with advantage, be reconsidered. I am accordingly to request that the Honourable Judges may be moved to favour him with an expression of their opinion as to the advisability of extending the system to the districts named in the margin, supposing that, in the opinion of the local officers, who will at the same time be consulted by Government, it will be possible to prepare for these districts a sufficient jury list."

(1) Midnapore.
(2) Rajshahye.
(3) Rungpore.
(4) Mymensingh.
(5) Chittagong.
(6) Cuttack.

We have set out this letter at length because it embodies the deliberate opinion of the Local Government in 1884 on the working of the jury system in the seven districts up to that time, and because the view expressed in it appears to be borne out by the papers before us relating to that period.

The High Court considered that the extension of the jury system thus proposed was not desirable. The Judges (Mitter, Norris, and Ghose, JJ., dissenting) reported against it in view of the following considerations:—

(1) The difficulty of procuring proper persons as jurors, regard being had to deficiency of education, using that term not only in its popular sense but in its widest acceptation.

(2) Superstition and prejudice which were still disturbing influences not unfrequently leading to failures of justice.

(3) Perversity, instances of which occasionally came to the notice of the Judges.

(4) Inability to grasp numerous details in complicated cases.

(5) Distaste for the duty shown by those whose services as jurors were specially desirable.

(6) The difficulty of providing a sufficient number of District Judges who were sufficiently experienced and qualified to preside at the trial of jury cases.

It will be observed that the opinion of the High Court was expressed only on the proposed extension of the system, and that neither the Government of Bengal nor the High Court contemplated any limitation of the system then existing, in respect either of districts or of the offences to which it had been applied since 1862.

xii. In 1890 the Government of India requested the Local Government and the Judges of the High Court to consider and report how the system of trial by jury had worked in the Lower Provinces; what opinion was entertained as to its merits as a means for the repression of crime; and what improvements, if any, were called for in its application.

As far as the High Court is concerned, it is sufficient to say that most of the Judges suggested amendments of the law calculated to secure a better administration of justice, and that none of the Judges suggested any other alteration in the system existing, except Mr. Justice Tottenham, who proposed the abolition of trial by jury in capital cases in the mufussal.

xiii. On 22nd June 1891 the Lieutenant-Governor of Bengal reported that a careful consideration of the opinions and figures obtained by him left no doubt in his mind of the failure of the jury system in these Provinces in its present shape. His Honour accordingly proposed to withdraw certain classes of offences which under the orders of 1862 and since that time had been triable by jury in certain districts, and also to extend that system to the trial of offences relating to marriage, and further recommended certain alterations in the law in respect of references by Sessions Judges in case of disagreement with the verdicts of juries, the ascertaining of the reasons for such verdicts, and the right of appeal on the facts where a jury was not unanimous and the Judge did not record his agreement with the majority.

xiv. The Government of India approved of the proposed withdrawal and addition of certain classes of offences; and accordingly, on the 20th October 1892, the Government of Bengal excluded from trial by jury in the seven districts in which that system of trial had

been introduced in 1862, offences under the following chapters of the Indian Penal Code, namely :—

Chapter VIII (*Offences against the Public Tranquillity*).

Chapter XVII (*Offences affecting the Human Body*), with the exception of sections 363 to 369 (*Kidnapping and Abduction*), section 372 (*Selling a minor for purposes of prostitution, etc.*), section 373 (*Buying a minor for purposes of prostitution etc.*), and section 376 (*Rape*).

Chapter XVIII (*Offences relating to Documents and to Trade or Property Marks*).

The Lieutenant-Governor further directed that all offences under Chapter XX (*Offences relating to Marriage*) and abetments of, and attempts to commit, such offences should be tried by jury in any Court of Session established in the seven selected districts. These orders took effect from and after the 1st November 1892.

xv. Subsequently the Lieutenant-Governor of Bengal, in his letter to the Government of India of the 2nd January 1893, stated that he desired to reconsider the matter in view of the distress and dissatisfaction, caused by the partial removal of what is valued as an important privilege, having been so great and so much beyond his expectation, and he suggested a Commission to consider the matter. This suggestion was approved of by the Government of India and the Secretary of State, and the present Commission has accordingly been appointed.

4. We understand our instructions to direct us to report with as little delay as possible whether in our opinion the classes of offences triable by jury in the seven districts should continue as notified on 20th October 1892, or should be altered by reverting to the former classification, or by adopting any new classification ; and also to report what changes, if any, in the present Code of Criminal Procedure are desirable to prevent miscarriages of justice.

5. We propose to consider, firstly, how far it has been established that trial by jury introduced into Bengal in 1862 has proved unsuccessful with regard to the administration of justice ; to what extent any failures of justice imputed to it are attributable to juries ; and lastly, whether this system of trial should be withdrawn in respect of certain classes of offences so triable, or whether, with proper safeguards, it should be maintained as under the orders passed in 1862.

The working of the system generally.

6. We have already shown the procedure in Sessions trials in Bengal since 1793, and the working of the jury system from its introduction in 1862 up to 1884, when the Local Government did not consider it to be a failure, but thought that it had "worked fairly well."

7. In 1890 inquiry was made into the system of trial by jury and reports were called for by Government on the following points :—

(1) how the system had worked ;

(2) what opinion was entertained as to its merits for the repression of crime ; and

(3) what improvements, if any, were called for in its application.

The Judges of the High Court considered that the system was capable of improvement. Their opinion was not especially asked as to any withdrawal of the system in respect either of locality or of the classes of offences triable by jury. It was evidently thought by the Judges that no opinion on this subject was required by the terms of the reference to them, and though some of the Judges stated that difficulty had been experienced in obtaining proper verdicts in certain classes of offences, especially in cases of homicide, and various amendments in the existing law were suggested, only one Judge suggested the abolition of trial by jury in capital cases.

The reports from the Executive and Judicial Officers varied. The majority of the Executive Officers was opposed to trial by jury and condemned the system. Some of the Judicial Officers reported strongly in favour of it; others reported against it. It is to be observed that in 1884 also the reports of the Executive Officers were more adverse than those of the Judicial Officers, and that in 1890 many of the Judicial Officers who reported against the system based much of their opposition to it on grounds not special to Bengal but equally applicable to England. Many of them were of opinion that in any country a trained Judge is a better tribunal for discovering the truth than an untrained jury. Apart from general considerations, many of them complained of the reluctance of juries to convict in cases of homicide or murder and of the reluctance of the High Court to interfere with the verdicts of juries in cases referred under section 307 of the Code of Criminal Procedure, 1882.

8. The Local Government was of opinion that these reports showed that trial by jury was a failure in Bengal in its present shape, and that, its total abolition being undesirable on

political grounds, early steps should be taken to make such changes in its working as might be best calculated to limit the injury which it entailed.

The Local Government accordingly recommended that references by Sessions Judges, when they differ in opinion from the verdict of a jury, should be compulsory; that it should be incumbent on the Sessions Judge to ascertain and record fully the reasons of the jury for their verdict, as "a simple and reasonable way to enabling him to be sure that he ought to disagree with the jury," and that there should be a right of appeal on the facts against the verdict of a jury, when the jurors are not unanimous, unless the Judge records his agreement with the majority. The Local Government also expressed its opinion that "the system of trial by jury in Bengal is particularly unfitted for certain classes of cases, especially those relating to murder and rioting," and it accordingly proposed to the Government of India that the trial by jury of offences under Chapters VIII, XVI (with some exceptions), and XVIII of the Indian Penal Code should be withdrawn, but that the system should be extended to offences under Chapter XX (relating to marriage). In the opinion of the Local Government the evidence adduced clearly pointed to the necessity of making the withdrawals proposed.

9. The Government of India were of opinion that defects of the present system of trial by jury in Bengal, as well as in other provinces, appeared to be mainly attributable to two causes."

(1) To the extension of the jury system (*a*) to areas to which it is unsuitable, and (*b*) to classes of offences which, as the experience now gained has shown, ought not to be cognizable by juries.

(2) To the fact that the provisions of section 307 of the Code of Criminal Procedure which were intended to give Sessions Judges and the High Court power to remedy and correct wrong verdicts, have failed to fulfil this intention.

After pointing out that the Lieutenant-Governor had, under the existing law, full power to modify the orders of 1862 so as to withdraw any classes of offences from trial by jury, the Government of India expressed their conviction that the action which the Lieutenant-Governor proposed to take was fully justified by the results reported.

The Government of India were opposed to the proposal to make reference by a Sessions Judge compulsory in every case in which he might disagree from the verdict of a jury; they disapproved of the proposal to empower Sessions Judges to question juries as to the reasons for their verdicts, except in so far as might be necessary to ascertain what the verdicts were, as provided by section 303 of the Code, but they noted for consideration on an amendment of the law the question whether before or after a general verdict has been taken, special verdicts should not be required on particular issues of fact, if not on the general credibility of particular evidence; and lastly, they disapproved of allowing an appeal against the decision of a jury, at least until all other available methods for the improvement of the system had been exhausted.

10. On 20th October 1892, orders, as already stated, were passed by the Lieutenant-Governor withdrawing from trial by jury in the seven districts of Bengal various classes of offences, and extending that form of trial to offences relating to marriage, as well as to abatements of, and attempts to commit, such offences.

11. In their Despatch to the Secretary of State, dated 21st December 1892, the Government of India thus summed up the result of the inquiries held and the information so acquired:

"The results of the recent inquiry and the combined weight of high authority which it disclosed appeared to us to point distinctly to the adoption of one or other of two alternatives: (1) either by legislation to impose the further restrictions on the jury system which are declared by the Local Government and the High Courts to be necessary to provide against failures of justice, or (2) to invite the responsible Local Governments to consider the question of making such necessary changes in the system as are practicable under the existing law."

12. We think that in the recent inquiry sufficient attention has not been given by many of the officers who have reported against it to the inherent merits of jury trial as a system which may be held to compensate for its defects, or to the special advantages which it possesses in a country like India, and which must be set off against the special disadvantages necessarily to be expected. As to the first, we would quote the words of Sir J. F. Stephen in his History of the Criminal Law of England (Vol. I, p. 572), which express our opinions in more appropriate language than we could offer. After considering the relative advantages to a proper administration of justice from trial by a jury, special and common, and from trial by a

Judge alone, and generally expressing an opinion adverse to trial by common juries, Sir J. F. Stephen proceeds to discuss the benefits resulting from the system of trial by jury :—

"There is a third point of view from which trial by jury must be considered,—namely its collateral advantages, and those I think are not only incontestable in themselves, but are to such importance that I should be sorry to see any change in the system, though I am alive to its defects. They are these :—

"In the first place, though I do not think that trial by jury really is more just than trial by a Judge, without a jury would be, it is generally considered to be so, and not unnaturally. Though the Judges are, and are known to be, independent of the Executive Government, it is naturally felt that their sympathies are likely to be on the side of authority. The Public at large feel more sympathy with jurymen than they do with Judges and accept their verdicts with much less hesitation and distrust than they would feel towards judgments, however ably written or expressed.

"In the next place, trial by jury interests large numbers of people in the administration of justice and makes them responsible for it. It is difficult to overestimate the importance of this. It gives a degree of power and of popularity to the administration of justice which could hardly be derived from any other source.

"Lastly, though I am, as every Judge must be, a prejudiced witness on the subject, I think that the position in which trial by jury places the Judge is one in which such powers as he possesses can be most effectually used for the public service.

"I think, however, that the institution does place the Judge in a position in which, with a view to the public interest, he ought to be placed,—that of a guide and adviser to those who are ultimately to decide, and a moderator in the struggle on the result of which they are to give their decision. The interposition of a man, whose duty it is to do equal justice to all, " between the actual combatants and the actual Judges on the result of the combat, gives to the whole proceedings the air of gravity, dignity, and humanity, which ought to be, and usually is, characteristic of an English Court, and which ought to make every such Court a school of truth, justice, and virtue. In short, if trial by jury is looked at from the political and moral point of view, everything is to be said in its favour, and nothing can be said against it. Whatever defects it may have might be effectually removed by having more highly qualified jurors. I think that to be on the jury list ought to be regarded as an honour and distinction. It is an office at least as important as, say, that of guardians of the poor, and I think that if arrangements were made for the comfort of jurors, and for the payment of their expenses when on duty, men of standing and consideration might be willing and even desirous to fill the position."

13. As regards India, the system has special merits and special drawbacks. Some of its special advantages arise from the fact that our criminal law is foreign, and that it is desirable to familiarise the people of India with it, by making them take part in its administration under the guidance of Judges who can explain to them its reasonableness and justice. Some, from the fact that the Sessions Judges are also foreigners, and that as compared with them, even after they have acquired experience from a prolonged residence in the country, a local jury (supposing the jurors to be intelligent and honest) should be better able to draw inferences of fact and to discriminate between the truth and falsehood of conflicting oral evidence given in their own language. Further, the odium of what may appear harsh punishments is shifted, in great part, from the Government, and the dread, however unfounded it may be, of the all-pervading influence of the Government affecting the judgment is removed. These advantages are sufficient to compensate for a certain number of cases in which criminals may escape conviction or may be convicted of lesser crimes than the evidence might warrant.

On the other hand, it was always evident from the beginning that the introduction of the system in India was an experiment involving certain risks. The people were unused to it; the diversity of races, religions and castes, might cause a bias in the minds of the jurors in particular cases; it was known that there was among many of them a reluctance to be accessory to the taking of life. This last feeling varies much in different parts of the country and among different sects, and is said in some places such as Surat to form an insuperable obstacle to securing a conviction in a case of murder. These difficulties no doubt deterred the Government from introducing the system over the whole Province of Bengal and led them to introduce it in the first instance in the seven most intelligent and advanced districts. These difficulties also led to the introduction of section 263 of the Code of 1872 now re-enacted in section 307 of the Code of 1882 so as to correct the miscarriages which must occasionally occur in any country where trial by jury exists and which experience was held to have shown occurred in an appreciable number of cases in Bengal.

14. The opinions before us show that experienced officers have frequently complained of the prevalence of wrong verdicts which they have attributed to various innate defects in the jurors. The statistics, on the other hand, do not show that there has been any larger number of such cases than might have been reasonably expected and they certainly do not indicate any breakdown of the system. We think that considerable weight should be given to the opinions of competent observers. Still, the statistics are of great importance as indicating the number of trials, the number of cases in which the Judge has disagreed with the jury, the number of cases referred, and the result of references; and they form

a sound basis for judging how far the matters complained of have operated so largely as to seriously interfere with the administration of justice. Opinions of this character have been expressed from time to time since 1862, but they have never been accepted as sufficient material for the condemnation of the system. There is reason to think that the variance between the adverse opinions and the actual results shown by the statistics can be explained by the bias caused by the occurrence of some case in which the unexpected result have shocked these officers, who are thus too easily led to believe in the prevalence of the influence which may have caused a failure of justice in an individual case. Having formed this strong opinion, and probably reported it to their superior officers, and having satisfied themselves of the existence of certain tendencies or prejudices calculated to interfere with the correctness of verdicts, and seen some instances of their operation, they have too readily assumed that these tendencies and prejudices were overwhelming and generally operative to the subversion of justice, without considering how far education or a sense of responsibility might counteract them and might have led to the majority of the verdicts being such as could not have been given if the tendencies and prejudices in question had not swayed the decision of the jury.

Assuming that such tendencies and prejudices on the part of jurors do exist, the statistics show that they do not operate to anything like the extent which might be expected from the perusal of many of the reports made to Government.

15. It must be borne in mind that some of the erroneous verdicts are probably due to want of practice on the part of the Judges in the very difficult part of charging a jury. A good and clear charge or an inefficient one frequently makes all the difference in a verdict. The careful appointment of only the best and most experienced Judges to jury districts must mitigate this danger, but the exigencies of the service must occasionally cause inexperienced officers to be temporarily appointed.

Some of the verdicts alleged to be erroneous may be fairly attributable to distrust of police evidence and of the manner in which cases are got up by the police. This distrust has not been without reason in the past, but steps have been recently taken to improve the police generally, and in particular to secure that the investigation and preparation of cases shall be entrusted to a higher and more trustworthy class of officers. With these improvements the distrust may be expected to gradually disappear.

Steps also have been taken to revise the jury lists so as to obtain a better class of jurors. No doubt this will have a most appreciable effect upon the character of the verdicts, and we notice that one Sessions Judge already reports an improvement from this cause.

16. For such erroneous verdicts as may be given, in spite of all improvements of the kind we have mentioned, and in spite of the increasing education of the people, the remedy of a reference under section 307 of the Code of Criminal Procedure ought, we think, to be sufficient. But there is a considerable body of opinion that this safeguard does not work as well as it ought to do, owing to two causes,—the reluctance of Sessions Judges to refer cases and the disinclination of the High Court to disturb a verdict when the case has been referred. This evil so far as it exists, may, we think, be met by an alteration of the law. This matter we shall discuss later on. It cannot safely be inferred that, in every case in which a Sessions Judge has disagreed with a verdict but has declined to refer the case, the verdict was necessarily wrong. Even after allowing for the reluctance to refer abovementioned, many of the cases must belong to that class where the Judge is not sufficiently confident of the correctness of his own conclusions, as against those of the jury, to feel that for the ends of justice he is bound to press his opinion, or to be certain that the case is not one in which two opinions can be reasonably formed on the evidence. In such cases there is a fair probability that the jury may be right, for there are many referred cases in which the High Court has on a full consideration of the evidence adopted the same conclusion as the jury and rejected that of the Judge.

17. We have examined certain statistics showing the percentages of judgments of Sessions Judges sitting without a jury which have been reversed or modified on appeal. There is no possibility of drawing from these statistics any safe deduction as to the comparative correctness of such judgments and the verdicts of juries, because the former are open to an appeal on the facts in every case at the instance of the accused, whereas no appeal on facts ordinarily lies from the verdict of a jury. These statistics, however, show how possible it is for Judges conscientiously to come to different conclusions on the same evidence in a large percentage of cases and emphasize the observations that it is unsafe to assume, as a rule, that the Judge is right and the jury wrong when they disagree.

Under section 374 of the Criminal Procedure Code all sentences of death are referred to the High Court for confirmation, and that Court before confirming any such sentence, considers

the evidence, whether the case has been tried by a jury or not. The statistics for six years show that 220 cases were referred under this section, and that in 18 cases, or about 8 per cent., the persons convicted and sentenced by the Court of Session were acquitted by the High Court. These cases are from all the districts of Bengal, including jury districts; and the figures indicate that, whatever be the form of tribunal, a certain percentage of reversals must be expected upon revision by a higher Court, and that erroneous convictions occur in a considerable number of cases.

18. We have not been able to find any reliable evidence of any deterioration in the verdicts of jurors since 1884. We have prepared, from the Annual Administration Reports of the High Court, a statement showing the results of trial by jury since 1877. This statement shows the number of cases tried by juries, the number of such cases in which the verdicts have been approved by the Sessions Judge, the number of cases referred, and the result of the cases tried by the High Court on such references. The returns on which the Government of India and the Bengal Government have proceeded relate only to the five years ending 1891. We have accordingly also showed the results for each of the preceding periods of five years which are as follows:—

	1877—1881.	1882—86.	1887—1891.
Number of trials held	1,988	1,692	1,505
Verdicts approved by Sessions Judges	1,696	1,384*	1,208
Cases referred	118	108	97
Verdicts accepted by High Courts in such cases	38†	48†	44†
Verdicts set aside or modified by High Court in such cases	75†	66†	48†

These returns, in our opinion, show no deterioration during the five last years on the figures of which period the system of trial by jury has been condemned. If the slight variation can be accepted as any criterion, it would seem to show less cause for dissatisfaction. If, on the other hand, we take the returns of 1883, which the Government of Bengal must have had before them when their letter of 1884 was written, stating that, though the system of trial by jury might not be said to be "anything like a complete success" it had "worked fairly well," we find that out of 344 trials held, the Judge concurred with the verdicts in 292 cases, disapproved wholly in 33, and partly in 19 cases, and referred only 15 cases, out of which the verdicts were accepted in only 3, and set aside in 12. In 1891, on the other hand, the results were much more favourable to juries for out of 20 references made and tried, the verdicts were set aside and affirmed in an equal number. So far, therefore, as statistics go, the results certainly do not indicate a deterioration.

19. After the fullest consideration of the very abundant materials before us, we cannot come to the conclusion that the jury system in its present shape has proved a failure in Bengal. Our general conclusion is the same as that arrived at by the Local Government in 1884 that "the system has worked fairly well in the more advanced districts to which it has been applied." We think that the evils complained of can be sufficiently met by progress on the lines previously followed and by slight alterations of the law so as to express in terms, open to no doubt what we understand to have been the intention of the Legislature in 1872 and 1882.

Murder Cases.

20. It is in trials for murder that complaints have been most general of failure of justice, because juries are unwilling to convict.

This is a complaint which has been made ever since the introduction of the system, and is one which section 307 was designed to meet. But the statistics show that the reluctance to convict in capital cases, so far as it exists as a sentiment, has been to a great extent overcome. We do not find that it can be imputed to any of the seven districts in Bengal, as it has been to three districts in Bombay, that there exists such an antipathy to the taking of life in any form on the part of a large and influential class of the community, as renders it impossible to obtain verdicts of conviction, however clear the evidence may be. We observe that both the Government and the High Court of Bombay propose that charges of murder should still remain triable by jury in the two jury districts of that presidency to which these special objections do not apply. The complaints in Bengal are more of a general character, that juries are prone to acquit in cases of homicide, as they are too ready to convict in cases of dacoity and kindred offences.

Taking the statistics of trials by jury in murder cases in the seven districts of Bengal the results cannot we think be regarded as very unfavourable; nor are they especially unfavourable in cases in which Brahmins were the persons under trial.

* In 14 cases of 1884 no approval or disapproval was expressed, the Judge having vacated office without recording his opinion.
† Cases actually disposed of during the period.

We find that in six years, *i.e.*, from 1887 to 1892, the total number of murder cases tried in the jury districts was 404. Of the persons charged with murder in these cases, 23 were Brahmins. Of these, 13 were acquitted and 8 convicted on verdicts concurred in by the Sessions Judge. Two cases remain; in one, a case from Nadia, the verdict of the jury, though not approved by the Sessions Judge, was not referred to the High Court, evidently on the ground that the Sessions Judge's dissent was not complete. In the other case a Brahmin named Khan Chand Boid, a constable employed to guard the Government Treasury at Hooghly, was convicted by the High Court against the verdict of the jury and was sentenced to transportation for life.

The reports show that in one case (20 W. R., 19) a jury at Hooghly convicted one Ramsodoy Chuckerbutty, a Brahmin, of murder, and the Sessions Judge passed sentence of death, but a majority of the Judges of the High Court who tried the case acquitted on the facts. In an unreported case at Howrah a Brahmin, named Ram Charan Mookerjee, was in 1891 convicted of murder by a Hindu jury and sentenced to death, but was acquitted by the High Court.

No case has been brought to our notice in which an erroneous verdict can be attributed to undue deference to the social position of the accused person. If there be any such case, it is not improbable that the verdict may be due in a great measure to greater care in the defence, and to the accused being better able than an ordinary criminal to obtain the services of an experienced and competent legal practitioner.

We have had inquiries made as to the status and position of the persons whose cases have been referred to the High Court by Sessions Judges who disagreed with the verdict, and we find that in an overwhelming majority of cases these persons were of humble position and low caste, and in many instances too poor to afford the expense of being represented at the hearing of the case before the High Court.

Riot.

21. It has been said that riot cases ought to be withdrawn because they are complicated, because there is apt to be local feeling, and because the results of the trials are unsatisfactory; and the Shambazar case is quoted as a convincing proof of this. These cases in Bengal present peculiar features. Generally there are two parties to the riot, and the prosecuting party are unwilling to state the actual truth as to the occurrence, lest it should appear that they too have rioted. There is no class of cases in which it is more difficult to ascertain the truth as regards either the circumstances of the riot or the participation of the accused in it. It is not unusual for the prosecuting party to introduce as actors in the riot persons belonging to the opposing party who were not present at the time. The large number of cases in which all or some of those who have been convicted by Sessions Judges without a jury have been acquitted by the High Court on the ground of the untrustworthy character of the evidence or of inconclusive identification, shows how unsafe it is to conclude that it is always the fault of the tribunal if, when a riot has undoubtedly taken place, it is impossible to obtain a conviction. The untrustworthy character of the evidence in these cases has usually more to do with this result than any incompetence in the tribunal.

Much might be done to simplify these cases for the jury by trying the accused in small batches, as allowed by Section 239, and by the Judge, after summing up generally on the circumstances of the alleged riot, summing up clearly as to the evidence of identification against each of the accused, and its value.

The objection arising from local feeling can be met, where it exists, by the transfer of the cases to another district under section 526.

22. The Shambazar case is a very peculiar one. There was a notorious riot of a very grave character which could not be doubted or disputed. We have not the evidence before us so as to express an opinion on it even if it were desirable to do so: but it is, we think, clear that there must have been very grave defects in the evidence of identification. For, had the identification of the accused been as clear as the occurrence of the riot, it is not conceivable that the experienced Judge who tried the case would not have referred it to the High Court. He must have been well aware of the numerous cases in which the High Court has reversed unanimous verdicts of juries when they appeared to be clearly wrong.

We do not find any sufficient case made out for the withdrawal of this class of cases, *i.e.*, Chapter VIII of the Penal Code, from the cognizance of juries.

Forgery, etc.

23. No cases have been brought to our notice to show any substantial reason for withdrawing cases under Chapter XVIII of the Indian Penal Code (offences relating to documents or to trade or property marks) from trial by jury. The complaints made have been of a general character and have not been established.

24. It has been urged that the remedies provided by law to prevent miscarriages of justice through erroneous verdicts have not been consistently applied, that there has been reluctance on the part of Sessions Judges to refer cases which should have been referred, and that in dealing with referred cases there has not been that uniformity of practice amongst the Judges of the High Court which is so necessary for an efficient administration of justice. We have had under consideration the judgments delivered in such cases during the last five years, and also in other cases published in the Law Reports. It has been argued that in some of these cases, so far as the judgments show, the opinions of the Sessions Judges have not been taken into consideration, and that the Judges of the High Court have been hampered in the consideration of the cases on their merits by analogies of English law applicable to the revision of verdicts in civil cases by Judges who are not Judges of the facts, and have rather required the party supporting the reference to show that the particular verdict was "perverse or unreasonable," which are the words used in the older English cases; or, if the case was dealt with without argument, have considered the case only from that point of view; although there are cases in which the Judges have considered the evidence on the merits in order to determine whether the view taken by the jury or that taken by the Sessions Judge was correct.

Working and proposed amendment of section 307 of the Code of Criminal Procedure.

On the other hand it has been argued that all that can be deduced from the reported cases is that some Judges have given more weight to the opinion of a jury than others; but that as this manifestly depends on the different points of view from which different Judges regard the same matters, the Legislature could not possibly lay down any rule regarding the degree of weight to be attached to the verdict of the jury or the opinion of the Sessions Judge.

To remove all doubts and to define the duties of Sessions Judges and of the High Court in more clear language, we recommend that for the words "so completely that he considers it" in the first paragraph of section 307 of the Criminal Procedure Code, 1882, the words "and is clearly of opinion that it is" should be substituted, and that the last paragraph of the same section should be modified so as to run somewhat in the following terms:—

"In dealing with the case so submitted, the High Court *shall consider the entire evidence, giving due weight to the verdict of the jury and to the opinion of the Sessions Judge, and of the dissentient jurors, if any, and* may exercise," etc., etc., continuing in the terms of that section. The words in italics are those which in our opinion should be introduced.

25. We learn the intention of the Legislature as to the duty of Sessions Judges from the observations of the Honourable Mr. J. F. Stephen:—

"We do not, of course, mean that the Judge should act in this manner in every case in which he has doubts as to the propriety of a verdict, or even in those cases in which he feels that, if he had been a juror, he would not have returned the same verdict. Our intention is that he should exercise the power in question in those cases only in which it is necessary to do so, in order to prevent a manifest failure of justice; and having regard to the strong motive which the Judge always has for avoiding all future trouble by accepting the view taken by a jury, I think there is little reason to fear that the power will be abused."

To encourage disagreement from the verdict of a jury, or to require a reference in every case in which the Sessions Judge would have come to a different conclusion, would be attended with mischievous results. Amongst these we may point out that it would by degrees utterly destroy all sense of responsibility amongst jurors, a feeling which it is obviously desirable to strengthen, rather than to impair; and the unfortunate effects that would probably ensue from the removal of all such trials to the High Court to be decided on the bare record, and without the advantage of hearing the evidence given.

We understand the meaning of the law to be, that if the Sessions Judge, after considering the fact that the jury or a majority of them have arrived at a certain conclusion, disagrees with that conclusion, and is clearly of opinion that it would occasion a failure of justice if he were to accept the verdict, it is his duty then, and then only, whatever the result may be, to refer the case to the High Court. The two elements—(1) disagreement with the verdict, and (2) the opinion that he cannot record and give full effect to the verdict without causing a failure of justice—are distinct and should be kept so. The alteration proposed is slight, but we trust that it will serve to make the law clearer and to emphasize the duty of a Sessions Judge not to record a verdict which he is satisfied will cause a failure of justice merely because he is uncertain whether the High Court will concur in his opinion, while making it equally clear that he ought not to refer unless he is satisfied that by giving effect to a verdict a failure of justice will ensue.

26. With regard to the second amendment recommended, we think that it was intended that the High Court should form an independent opinion on the evidence in the same way as

it is bound to do, and invariably does, in an appeal in a case tried with assessors, giving due weight to the opinion of the Sessions Judge as well as to the verdict of the jury. If we are correct in this view, it is desirable that the law should be expressed in clear terms admitting of no doubt.

With the law thus expressed we think that sufficient safeguards would be provided against any miscarriages of justice from erroneous verdicts.

27. After considering all the matters above set forth, including the probable effect of the further safeguards we have recommended, and the fact that for thirty years the offences specified in the orders of 1862 have been tried by juries, and that grave distress and dissatisfaction has been caused by the partial withdrawal of what has come to be regarded as a boon and a privilege, and considering also that, while it is necessary that justice should be administered, it is equally necessary that the subject should feel and be satisfied that it is being properly administered, we have come to the unanimous conclusion that the classification of offences triable by jury as it stood before the 20th October 1892 should be reverted to.

The additional safeguards and improvements recommended in our report will, we anticipate, diminish such evils as exist at present, but it is not in our opinion necessary or desirable to delay reverting to the former classification until the necessary legislation can be carried out. At the same time we think it desirable that the alteration in the law recommended by us should be made with the least possible delay.

28. We have also considered how far there should be any charges in the classification of offences triable by jury. We can suggest no improvement in the classification of offences as given in the orders of 1862. We prefer a classification by chapters of the Penal Code to one by the degree of punishment which may be imposed, as in Bombay. The Bengal classification is more simple and not open to confusion resulting from charges for offences not triable by jury being added to charges for offences so triable.

Offences relating to marriage.

29. We observe that by the recent order offences under Chapter XX, Indian Penal Code (*Offences relating to Marriage*), have been made triable by jury, and have considered whether this is reasonable and expedient. The change has no doubt been prompted by a desire to leave to juries the determination of cases in which matters relating to their social or religious habits or customs may be involved. It seems to us, however, that in consequence of the diversity of religious and social habits and caste customs, this object will not be attained so well as in a trial with the assistance of assessors. The jurors are selected by lot, and it may so happen that by this process none of the very religion or class which should be associated for the trial may be selected;—for instance, where the parties in a trial for an offence relating to marriage may be all Mahomedans, a jury consisting entirely of Hindus may be selected by lot, and where the parties are Chamars or members of the lowest classes, a jury of Mahomedans or Hindus of the higher and educated classes, ignorant of all the habits and customs of the parties, may be selected. On the other hand, in a trial with the assistance of assessors the very opposite results can be secured, because the Sessions Judge is able to *choose* persons to act as assessors, who are of the same caste or religion or have intimate knowledge of the customs of the parties. Advantages, too, can be derived in such cases from the more intimate relations which exist between a Judge and assessors than between a Judge and a jury, If, therefore, we have rightly understood the reasons which have induced the Local Government to include offences relating to marriage amongst those triable by jury, we have recommended that they be excluded.

Extension of the system to other offences.

30. We have also had under consideration whether trial by jury in the seven selected districts should be extended to the trial of other offences. We feel, however, that, with the information before us, we are not competent to express any safe opinion on this matter. It is one that can be determined only after detailed inquiry which, from the instructions that we have received to submit our report with as little delay as possible, we have not thought it our duty to undertake. It is a matter that can be separately dealt with by Government.

31. Several minor points in connection with the terms of the reference made to us have been considered and discussed, and upon these we desire also to express an opinion.

Section 303, Code of Criminal Procedure.

32. It has been suggested that the terms of section 303 of the Code of Criminal Procedure should be amended so as to enable a Sessions Judge to obtain more clearly the opinions of the jury on parts of the evidence so as to learn and place on record the grounds upon which the verdict was arrived at. We are not in favour of any alteration in the present law which provides sufficient means for obtaining a verdict, and we think that there are strong objections to anything of the nature of a cross-examination of the jurors as to details of a case so as to obtain

their opinion on portions of the evidence. Amongst these it will be sufficient to say that it must very frequently happen that the jurors may individually arrive at the same conclusion by different processes of reasoning, or they may find difficulty in expressing intelligently or logically a conclusion fairly arrived at on consideration of the entire case. No doubt in certain cases—for instance, in cases of culpable homcide not amounting to murder, or of house-breaking with intent to commit an offence—it may be necessary to give a special verdict to determine the exact offence, so as to regulate the sentence; but the terms of the present law sufficiently provide for this, and we are opposed to any alteration for the purposes suggested.

It has also been proposed to permit questions to be put to the jurors after verdict delivered so as to enable the Sessions Judge to determine whether he should refer the case to the High Court, as well as to enable the High Court itself in a referred case to learn whether a verdict was on reasonable and proper grounds; but the same objections equally apply. We prefer to adopt the course recommended by us,—*viz.*, that each case referred by a Sessions Judge should be tried by the High Court on its merits on the evidence, as less likely to cause embarrassment and more certain to ensure a just and proper decision.

Special verdicts.

33. We have considered anxiously whether it is to practicable to enable the Judge to direct the jury to return a special verdict on issues framed by him. This proposal is supported by high authority, and we are fully sensible of the advantages it would be to the High Court in referred cases to have a special, instead of a general, verdict to deal with, but we have reluctantly come to the conclusion that such a procedure would be liable to create greater evils than it would remedy.

Special Juries.

34. We agree with the conclusion arrived at by the Government of India that it is not desirable to have Special Juries, in so far as these may tend to weaken Common Juries, but at the same time we are of opinion that cases may occur in which the employment of a Special Jury may be highly desirable in the interests of justice as well as to satisfy public opinion, and we think that means may be provided which will meet the objection raised. It might be provided that while there is a separate list of Special Jurors, the gentlemen on that list should not be exempted from ordinary service as Common Jurors. They might be included also in the general list and be liable to serve when drawn for ordinary trials without being reserved only for trials by Special Juries. No additional service within the prescribed period of six months should be required. It might be left to the Local Government, on consideration of the jury list and other matters peculiar to a district to which trial by jury may have been extended, to declare that in the Sessions Court of that district trials by Special Jury might be held, and it might be left to the discretion of the Sessions Judge of that district to determine in each case, on application made, whether a trial should be so held, provided that the application be made in sufficient time to summon a Special Jury. If this recommendation be accepted, it will become necessary to amend the law so as to provide for the preparation of Special Jury lists, and for summoning such jurors.

Number of Jurors.

35. It has been proposed by the Government of Bengal to reduce the number of jurors from five to three. The law permits a jury to consist of from nine to three members, according as the Local Government may direct. Under the Code of 1861 the minimum was five, and seven was the number fixed by the Local Government for juries in Bengal. The Code of 1872 reduced the minimum to three, and in 1873, with the concurrence of the Judges of the High Court, the number was fixed at five. We are aware of no reason for a further reduction. It is not stated that under the present rule service on juries is too frequent or irksome. On the other hand, we think that three, except on some special ground, is too small a number for a jury, and that if improper influences are attempted, they are more likely to be successful on the smaller number.

Age of Jurors.

36. We also find no sufficient grounds assigned for altering the limits of age of persons liable to serve as jurors, and we observe that this limit was fixed by the Code of 1861 and has remained unchanged until the present time.

Area of Selection of Jurors.

37. Under the Codes of 1861 and 1872, a jury list was prepared of "persons residing within ten miles from the place where Sessions trials are held, or within such other distance as the Local Government may think fit to direct," but the Code of 1882, section 319, made all persons between the prescribed ages liable to serve as jurors at any trial within the district within which they reside. We prefer that it should be left to the discretion of the

Local Government as under previous legislation to determine, on consideration of the circumstances of each district, the area from which a juror should be selected, as districts vary in extent and in the means of travelling available.

Revision of Jury Lists.

38. We observe that attention has been directed to this subject, and that in the revisions recently made the lists have been considerably reduced by the exclusion of many unfit persons. There can be no doubt that much benefit will result from this, and strict attention should be enjoined to this important duty in the future.

We notice that in one district the recent revision of the list of jurors has resulted in the exclusion of the names of all Honorary Magistrates,—that is to say, of a class of men who, for the very reasons for which they have been given magisterial powers, are best fitted to serve as jurors. They are not liable to exemption under any of the provisions of section 320 of the Procedure Code; and we think that all Honorary Magistrates, as such, should be included in all lists of jurors in the districts in which they reside.

We would also invite attention to the large number of exemptions granted under clause (*k*) of section 320 of the Code. These include certain officers of the Eastern Bengal State Railway,* all Barristers practising in the mofussil,† District and Assistant Superintendents of Traffic and Guards on the East Indian Railway,‡ and local Auditors on the staff of Examiners of Local Accounts in Bengal.§ The Chief Customs Authority or Chief Customs Officer is also exempted under section 10 of Act VIII of 1878, and he has power under that section to exempt from service as a juror any other officer of Customs whom he deems it necessary to exempt on grounds of public duty. We would suggest that the necessity of exempting such a large body of men, who *primâ facie* are well fitted to serve as jurors, should be carefully reconsidered. Such exemptions deprive the jury lists of some of the persons best fitted to serve, and further tend to take from the position of juror much of the dignity which should attach to it.

* Notification, 31st August 1885, *Calcutta Gazette*, 9th September, Part I, page 886.
† Notification, 14th August 1888, *Calcutta Gazette*, 15th August, Part I, page 733.
‡ Resolution, 7th May 1875, *Calcutta Gazette*, 19th May, Part I, page 592.
§ Letter to Accountant-General, Bengal, No. 2067-J., of 8th May 1889, and Notification of the same date.

Accommodation for Jurors.

39. It has also been represented to us that sufficient attention is not paid to the convenience and comfort of those summoned as jurors, and that in consequence native gentlemen of recognised social position are reluctant to attend. The matter was dealt with by a Circular of the High Court, dated 9th August 1865, but it does not appear that adequate steps have been taken to give effect to the instructions regarding the accommodation for jurors.

Remuneration of Jurors.

40. On this point we are not unanimous and find some difficulty in making any recommendation. The question is one which more intimately concerns the native community, and our members who represent that community differ in opinion. The matter is of no great importance, and may be left for settlement by Government after inquiry such as we have not been able to make.

Seclusion of Jurors.

41. The question of the seclusion of jurors during the trial and up to the delivery of their verdict is one which was considered by the Local Government and by the High Court in 1867. It is sufficient for us to say that the High Court has power under section 296, Criminal Procedure Code, to make rules in this direction, that it has never seen its way to framing any such rules, and that we find ourselves equally unable to suggest any rules which would not be repugnant to the prejudices and customs of the native community in Bengal.

Right of Appeal.

42. We are aware that opinion in England is inclined to an appeal, but we are not aware with what restriction it would be allowed; we are, therefore, unable to determine how far any recommendation that we could make would be in accordance with the rule in England and also applicable to Bengal. It has been recommended on high authority that an appeal should be allowed in cases in which the verdict is not unanimous and where the Sessions Judge also disagrees, but does not consider it necessary to refer the case to the High Court. We are of opinion, however, that section 307 of the Criminal Procedure Code with the alterations that we have suggested, will provide adequate protection against failures of justice.

Heads of charge to Jury, S. 367, C. P. C.

43. It has been suggested to us that some provision should be made for a *verbatim* record of Sessions Judge's charge to the jury, but, in the opinion of the majority of us, none of the suggestions made on this point are practicable.

44. In dealing with all these matters, we have abstained from going beyond the strict terms of the reference made to us. We may mention that discussion of other matters has been invited, but we have, for the reasons stated, not taken them into consideration. We consider that the matters referred to us are defined by the two paragraphs of the Resolution of the Government of India, dated the 23rd February 1893, set out in the commencement of this report, and that we are not authorised to travel beyond them.

We, the undersigned, accordingly report that, in our opinion, it is desirable that the classes of offences which, before the 20th October 1892, were triable by jury in the seven districts of Bengal abovementioned, should be triable by jury in those districts and that the present classification should be amended accordingly.

We further report that, in our opinion, it is desirable, for the purpose of preventing miscarriage of justice, to amend section 307 of the Criminal Procedure Code by the substitution of the words "and is clearly of opinion that it is" for the words "so completely that he considers it," in the first paragraph of that section, and by the insertion in the third paragraph of the words "shall consider the entire evidence, giving due weight to the verdict of the jury and to the opinion of the Sessions Judge and of the dissentient jurors, if any, and"; and that it is also desirable for the same purpose to make such further amendments in the Criminal Procedure Code as may be necessary to carry out recommendations hereinbefore set forth as regards special jurors and the area from which jurors should be selected.

(Signed) H. T. PRINSEP.
,, G. H. P. EVANS.
,, JOTINDRO MOHUN TAGORE. *
,, ROMESH CHUNDER MITTER. *
,, C. A. WILKINS.

March 24, 1893.

* Subject to separate notes attached to this report.

Note by Sir Romesh Chunder Mitter, Kt.

I. As regards the question whether trial by jury in the seven selected districts should be extended to the trial of other offences, I think it right to add that in my opinion there are many offences in the Indian Penal Code and other Acts which were not made triable by jury in 1862, but which may now with advantage be made so triable. Certain offences under the Penal Code were probably not originally made triable by jury because they were not exclusively triable by Courts of Session. But cases coming within this class are, by reason of their importance, frequently committed to Courts of Session for trial and many of these should, in my opinion, be tried by jury in jury districts. There seems, for instance, no reason why offences under Chapter IX or Chapter XXII of the Code should not be triable by a jury when committed to the Sessions, considering that offences against Public Justice are so triable. Similarly the offence of Defamation (Chapter XXI) seems to me to be an offence eminently fit for trial by a jury.

II. As regards offences under special Acts, I am of opinion that there are several which might conveniently be made triable by jury. For example, when in the course of proceedings under the Registration Act, a person is charged with using a forged document and mking a false statement with reference to it, it is manifestly inconvenient that, as regards the charge of forgery under the Penal Code, he should be tried by a jury, while on the same facts as regards the charge under section 82 of the Registration Act he should be tried by the Judge with the aid of assessors. This anomaly could be avoided by making all offences in the Sessions Court in jury districts triable by jury except those which are specially mentioned by the Local Government.

III. It seems to me of the utmost importance that in cases tried by jury there should be an accurate record kept of the Judge's charge to the jury. At present, though the law requires that the Sessions Judge should record the heads of his charge to the jury, it contains no provision as to when or how such record should be made. As a matter of practice I am informed Sessions Judges generally record from memory or their own notes the substance of the charge delivered orally, after the verdict has been taken. This course is open to many obvious objections and is likely to lead to unsatisfactory results. When an appeal has to be preferred to the High Court in a jury case, the appellant in appealing against an alleged misdirection of the Judge is sometimes forced to complain of the Judge's charge, not as it was probably laid before the jury, but as it has been recorded by the Judge after the verdict has been delivered. I am of opinion that the record should contain a strictly accurate report of the charge as delivered by the Judge to the jury.

IV. In my opinion there are two courses, the adoption of either of which would secure this end:—1st, it should be made obligatory upon the Judge to write out his summing up before he proceeds to charge the jury. But this is a course which I am informed, though occasionally adopted by Judges in the moffassal, is fraught with inconvenience and is likely to delay the trial. I am therefore disposed to recommend that a Bench Clerk should be attached to each Sessions Court whose duty it should be to take down in shorthand the Judge's charge as it is delivered, and whose transcript of the charge, when signed by the presiding Judge, should form part of the record.

Note by Maharaja Sir Jotindra Mohan Tagore, Bahadur, K.C.S.I.

I sign the Report subject to the note recorded below.

I agree with my colleague Sir Romesh Chunder Mitter, Kt., in the opinions he has expressed in paragraphs I and II of his note appended to the Report, so far as they relate to the extension of trial by jury to other offences. I agree that all offences in the Sessions Court in jury districts should be made triable by jury, save those which may be specifically excepted by the Local Government. *Primâ facie* I see no reason why a majority of the offences which now come before the Sessions Court, and which are comparatively of a less serious nature than those included in Chapters VIII, XVII, XVIII, etc., of the Indian Penal Code, should not also be made triable by jury, especially as some experienced Government officials have themselves recommended the extension of trial by jury to those offences. I also agree in the opinion expressed in paragraph III of the aforesaid note regarding the importance of keeping a full and accurate record of the Judge's charge to the jury, but I am not sure how far the means suggested by my learned colleague in paragraph IV of his note are likely to secure practically the object aimed at.

SCHEDULE.

PAPERS READ AND CONSIDERED BY THE COMMISSION.

Resolution of the Government of India in the Home Department, No. $\frac{5(\text{Judicial})}{201\text{-}208}$, dated 23rd February 1893.

General Papers.

Extract regarding trial by jury from the Annual Reports of the Calcutta High Court on the Administration of Criminal Justice in Bengal for each of the years 1862 to 1891.

Extracts regarding trial by jury from the Annual Reports of the Sessions Judges of the 24-Parganas, Hooghly, Burdwan, Murshidabad, Nadia, Patna, and Dacca for the years 1883 to 1891.

Extracts regarding trial by jury from the Annual Administration Reports of the Bengal Government for the years 1864-65 to 1890-91.

Extract regarding trial by jury from the letters of the Government of Bengal to the Government of India, on the High Court's Annual Reports on the Administration of Criminal Justice in Bengal for the years 1883 to 1891.

Extracts from the Proceedings of the Legislative Council of the 9th December 1870, 30th January and the 16th April 1872, and 25th January 1884. Also extracts from the preliminary report of the Special Committee of the Legislative Council and from the supplementary report of the Select Committee on the Bill which became Act X of 1872.

Office Memorandum by the Government of India (Home Department), No. 1110, dated 25th August 1892.

Bengal Correspondence.

Letter from the Sessions Judge, Murshidabad, to the Government of Bengal, No. 52, dated 27th May 1871.

Letter from the Government of Bengal to the Commissioner of Rajshahi, No. 2710, dated 12th June 1871.

" " the Commissioner of Rajshahi to the Government of Bengal, No. 160, dated 11th July 1871.

" " the Government of Bengal to the Registrar, High Court, No. 3499, dated 27th July 1871.

" " the Commissioner of Burdwan to the Government of Bengal, No. 102, dated 1st March 1872.

" " the Registrar, High Court, to the Government of Bengal, No. 205, dated 7th March 1872.

Letter from the Government of Bengal, to the Registrar, High Court, No. 1653, dated 11th March 1872.

" " the Registrar, High Court, to the Government of Bengal, No. 326, dated 15th April 1872.

" " the Government of Bengal, to the Registrar, High Court, No. 2611, dated 23rd April 1872.

" " the Government of Bengal to the Registrar, High Court, No. 1924-J., dated 17th July 1884.

" " the Commissioner of Burdwan, to the Government of Bengal, No. 376, dated 28th August 1884.

" " the Chief Commissioner of Dacca, to the Government of Bengal, No. 257-M., dated 28th August 1884.

" " the Commissioner of Orissa to the Government of Bengal, No. 511, dated 30th August 1884.

" " the Commissioner of Chittagong to the Government of Bengal, No. 574, G. M., dated 12th September 1884.

" " the Commissioner of Rajshahi to the Government of Bengal, No. 626 Jct., dated 11th November 1884.

" " the Commissioner of the Presidency Division to the Government of Bengal No. 18 Ct. J. G., dated 17th November 1884.

" " the Registrar, High Court, to the Government of Bengal, No. 1271, dated 22nd April 1885.

" " the Government of Bengal to Judges of Midnapore, Jessore, Rajshahi, and Chittagong, No. 560-63 J. D., dated 26th May 1885.

" " the Judge of Midnapore to the Government of Bengal, No. 98, dated 2nd June 1885.

" " the Judge of Jessore to the Government of Bengal, No. 349-J., dated 10th June 1885.

" " the Judge of Chittagong to the Government of Bengal, No. 251-G., dated 16th June 1885.

" " the Judge of Rajshahi to the Government of Bengal, No. 826G.-G., dated 19th August 1885.

" " the Government of India (Home Department) to the Government of Bengal, No. 742, dated 31st May 1890.

" " the Government of India (Home Department) to the Registrar, High Court, Calcutta, No. 745, dated 31st May 1890.

" " the Government of Bengal to the Government of India (Home Department), No. 122 J. D., dated 22nd June 1891, with enclosures, *viz.*:—

" " the Additional Judge of the 24-Parganas, No. 252, dated 9th July 1890.

" " the Judge of Patna, No. $\frac{\text{Sct.}}{197}$, dated 21st July 1890.

" " the Judge of Burdwan, No. 1606, dated 7th August 1890.

" " the Judge of the 24-Parganas, No. 763, dated 9th August 1890.

" " the Judge of Nadia, No. 477, dated 19th August 1890, with enclosures from the Bar Library and from the Government Pleader, Krishnagar.

" " the Inspector-General of Police, No. 11832, dated 2nd September 1890.

" " the Judge of Dacca, No. 1016, dated 2nd September 1890.

" " the Judge of Hooghly, No. 1334, dated 22nd September 1890, with enclosures from the Public Prosecutor, from the Bar Association, and from the Muktears, Hooghly.

" " the Commissioner of Patna, No. 589-G., dated 24th September 1890.

" " the Judge of Murshidabad, No. 1291, dated 28th September 1890.

" " the Commissioner of Dacca, No. 1357-J., dated 7th October 1890.

" " the Commissioner of the Presidency Division, No. 106-J. G., dated 16th October 1890, with enclosure from Magistrate of Nadia, No. 1470-J. G., dated 30th September 1890.

" " the Commissioner of Burdwan, No. $\frac{\text{201 T. G.}}{\text{292 T. G.}}$, dated $\frac{\text{31st October 1890}}{\text{5th November 1890}}$, with enclosure from Magistrate of Hooghly, No. 1725, dated 9th September 1890.

" " the Judge of Dacca, No. 45, dated 16th January 1891.

" " the Commissioner of the Presidency Division, No. 14-J. G., dated 18th February 1891.

" " the Registrar, High Court, Calcutta, to the Government of India (Home Department), No. 540, dated 9th February 1891.

Letter from the Government of Bengal to the Government of India (Home Department), No. 4675-J., dated 21st December 1891.

" " the Government of India (Home Department), to the Government of Bengal, No. 1107, dated 25th August 1892.

Notification of the Government of Bengal, dated 20th October 1892, with endorsement No. 907-J. D., of the same date.

Letter from the Government of Bengal to the Judges of—

The 24-Parganas, Hooghly, Burdwan, Murshidabad, Nadia, Patna, Dacca, } No. 917-J. D., dated 29th October 1892, with endorsements Nos. 918-919-J. D.

Letter from the Government of Bengal to the Government of India (Home Department), No. 4056-J., dated 10th November 1892.

" " the Government of Bengal to the Government of India (Home Department), No. 4047-J., dated 11th November 1892.

" " the Government of Bengal to the Government of India (Home Department), No. 4527-J., dated 12th December 1892.

Despatch from the Government of India to Her Majesty's Secretary of State for India, No. 82 of 1892, dated 21st December 1892.

Letter from Maharaja Durga Churn Law, C.I.E., to the Government of Bengal, dated 23rd December 1892, with enclosed memorial of same date of the inhabitants of Calcutta and its suburbs in public meeting assembled.

" " the Government of Bengal to the Government of India (Home Department), No. 47-23 J., dated 27th December 1892.

" " the Government of Bengal to the Government of India, No. 35-J., dated 2nd January 1893.

Despatch from the Government of India to Her Majesty's Secretary of State for India, No. 1 of 1893, dated 4th January 1893.

Letter from Maharaja Durga Churn Law, C.I.E., to the Government of Bengal, dated 7th January 1893, with enclosed memorial from the Committee appointed by the inhabitants of Calcutta, etc., in public meeting assembled.

" " Maharaja Durga Churn Law, C.I.E., to the Government of Bengal, dated 10th January 1893, with enclosed appendices to the Committee's memorial.

" " the Government of Bengal to the Government of India (Home Department), No. 208-J., dated 13th January 1893.

Despatch from the Government of India to Her Majesty's Secretary of State for India, No. 5 of 1893, dated 18th January 1893.

Circular letter from the Government of Bengal to the Judges of Jury Districts, No. 4686-J., dated 21st December 1893.

" " the Government of Bengal to the Judges of Jury Districts, No. 67-J., dated 4th January 1893.

Letter from the Judge of Murshidabad to the Government of Bengal, No. 1282, dated 30th December 1892.

" " the Judge of Hooghly to the Government of Bengal, No. 4232, dated 31st December 1892.

" " the Judge of Dacca to the Government of Bengal, No. 16, dated 5th January 1893.

" " the Judge of Nadia to the Government of Bengal, No. 31, dated 7th January 1893.

" " the Judge of Hooghly to the Government of Bengal, No. 55, dated 9th January 1893.

" " the Judge of Burdwan to the Government of Bengal, No. 85, dated 10th January 1893.

" " the Judge of Murshidabad to the Government of Bengal, No. 38, dated 13th January 1893.

" " the Judge of Dacca to the Government of Bengal, No. 91, dated 14th January 1893.

Letter from the Government of India to the Government of Bengal, No. 69, dated 16th January 1893.

" " the Additional Sessions Judge of the 24-Parganas and Hooghly to the Government of Bengal, No. 27 dated 20th January 1893.

" " the Additional Sessions Judge of the 24-Parganas and Hooghly to the Government of Bengal, No. 28, dated 20th January 1893.

" " the Judge of Patna to the Government of Bengal, No. 70, dated 27th January 1893.

Note by Mr. T. D. Beighton, District and Sessions Judge, dated 17th December 1892.

Letter from Mr. Beveridge, Additional Sessions Judge, 24-Parganas, dated 23rd December 1892.

Circular letter from the Government of Bengal to the Judges of Jury Districts, No. 4758-J., dated 29th December 1892.

Letter from the Judge of Hooghly to the Government of Bengal, No. 4233, dated 31st December 1892.

" " the Judge of Nadia to the Government of Bengal, No. 15, dated 4th January 1893.

" " the Judge of Dacca to the Government of Bengal, No. 49, dated 10th January 1893.

" " the Judge of Murshidabad to the Government of Bengal, No. 33, dated 12th January 1893.

" " the Additional Sessions Judge of the 24-Parganas and Hooghly to the Government of Bengal, No. 10, dated 13th January 1893.

" " the Judge of Burdwan to the Government of Bengal, No. 222, dated 28th January 1893.

" " the Judge of Patna to Government of Bengal, No. 171-S., dated 22nd February 1893.

Circular letter from the Government of Bengal to the Judges of Jury Districts, No. 4759-J., dated 29th December 1892.

Letter from the Judge of Murshidabad to the Government of Bengal, No. 23, dated 10th January 1893.

" " Patna to the Government of Bengal, No. 24-S., dated 11th January 1893.

" " Patna to the Government of Bengal, No. 40-S., dated 18th January 1893.

" " Nadia to the Government of Bengal, No. 103, dated 30th January 1893.

" " Hooghly to the Government of Bengal, No. 387, dated 31st January 1893.

" " Burdwan to the Government of Bengal, No. 295, dated 8th February 1893.

" " Dacca to the Government of Bengal, No. 398, dated 25th February 1893.

Circular letter from the Government of Bengal to the Judges of Jury Districts, No. 306-J., dated 19th January 1893.

Letter from the Judge of Hooghly to the Government of Bengal, No. 311, dated 26th January 1893.

" " Murshidabad to the Government of Bengal, No. 107, dated 26th January 1893.

" " Nadia to the Government of Bengal, No. 97, dated 28th January 1893.

" " Hooghly to the Government of Bengal, No. 354, dated 30th January 1893.

" " Burdwan to the Government of Bengal, No. 261, dated 1st February 1893.

" " Patna to the Government of Bengal, No. 98-S., dated 1st February 1893.

" Additional Sessions Judge of the 24th Parganas to the Government of Bengal, No. 83, dated 27th February 1893.

" Additional Sessions Judge of the 24-Parganas and Hooghly to the Government of Bengal, No. 94, dated 7th March 1893.

" Government of India (Home Department) to the Government of Madras, No. 740, dated 31st May 1890.

Letter from the Government of Madras to the Government of India (Home Department),

Madras correspondence. No. 2096, dated 29th December 1890, with enclosures, *viz*.:—

Letter from the Judge of Vizagapatam, No. 575, dated 12th August 1890.
" " " South Arcot, No. 74, dated 12th August 1890.
" " " Tanjore, No. 400, dated 13th August 1890.
" " " Coimbatore, No. 973, dated 16th August 1890.
" " " South Arcot, No. 88, dated 16th September 1890.
" " the Registrar, Madras High Court, No. 2543, dated 5th November 1890.
" " the Registrar, Madras High Court, No. 2565, dated 7th November 1890.

Letter from the Government of India (Home Department) to the Government of Madras, No. 1105, dated 25th August 1892.

" the Government of Madras to the Government of India (Home Department), No. 268, dated 6th February 1893, with enclosures, *viz*.:—

Resolution of Madras Government, No. 1827 (Judicial), dated 28th September 1892.
Letter from Registrar, Madras High Court, No. 3281, dated 9th December 1892.

Letter from the Government of India (Home Department) to the Government of Bombay, No. 741, dated 31st May 1890.

Bombay correspondence.

Letter from the Government of Bombay to the Government of India (Home Department), No. 7105, dated 19th December 1890, with enclosures, *viz*.:—

Letter from the Judge of Thana, No. 1499, dated 19th July 1890.
" " " Ahmednagar, No. 1791, dated 28th July 1890.
" " " Surat, No. 1220, dated 14th August 1890.
" " " Poona, No. 391, " 16th " "
" " " Karachi, No. 1017, " 19th " "
" " " Belgaum, No. 1317, " 23rd " "
" " " Ahmedabad, No. 1838, dated 22nd September 1890.
" " Judicial Commissioner in Sind, No. 1847, dated 26th September 1890.
" " Registrar, Bombay High Court, No. 2003, dated 26th September 1890, with enclosures, *viz*.:—

Letter from the Judge of Surat, No. 484, dated 14th March 1890.
" " " Poona, No. 106, dated 15th March 1890.
" " " Thana, No. 654, dated 18th March 1890.
" " " Belgaum, No. 699, dated 17th April 1890.
" " " Ahmedabad, No. 314, dated 19th April 1890.

Letter from the Government of Bombay to the Government of India (Home Department), No. 614, dated 27th January 1893, with enclosures, *viz*.:—

Letter from the Commissioner of the Central Division, No. P.-2285—51, dated 18th December 1892.
" " the Magistrate of Nasik, No. 7590, dated 12th November 1892.
" " " of Khandesh, No. 8883, dated 12th November 1892.
" " " of Sholapur, No. 644-G., dated 23rd November 1892, enclosing letter from the Judge of Sholapur-Bijapur No. 2611, dated 5th November 1892.
" " " of Satara, No. 12—3286, dated 28th November 1892, enclosing letter from the Judge of Satara, No. 2418, dated 24th November 1892.
" " " of Ahmadnagar, No. D.-14, dated 19th December 1892.

Memorandum from Commissioner of the Central Division, No. P.-12, dated 6th January 1892.

Letter from the Commissioner of the Northern Division, No. 1516—44, dated 22nd December 1892.
" " Magistrate of Thana, No. 6179, dated 8th November 1892.
" " " of Broach, No. 36, dated 8th December 1892.
" " " of Panch Mahals, No. 14, dated 14th December 1892.
" " " of Kaira, No. 366, dated 15th December 1892.
" " " of Ahmedabad, No. C. M.—16, dated 15th December 1892, enclosing letter from the Judge of Ahmedabad to the High Court, No. 1739, dated 10th December 1892.
" " " of Surat, No. 82-M., dated 19th January 1893.

Letter from the Commissioner in Sind, No. 2271, dated 23rd December 1891.
" " Judge of Shikarpur to the Magistrate of Upper Sind Frontier, No. 4, dated 10th November 1892.
" " Magistrate of Upper Sind Frontier, No. 67, dated 17th November 1892.
" " Deputy Commissioner, Thar and Parkar, No. 819, dated 26th November 1892.
Memorandum from the Magistrate of Shikarpur No. 26, dated 3rd December 1892, enclosing letter from the Judge of Shikarpur, No. 7, dated 30th November 1892.
Letter from the Magistrate of Hyderabad, No. 9—4866, dated 9th December 1892, enclosing extracts from the Judge of Hyderabad's Letter No. 3, dated 28th November 1892.
" " " of Karachi, No. 2681, dated 22nd December 1892.
" " the Judicial Commissioner in Sind, No. 8, dated 17th December 1892, enclosing letter from the Judge of Karachi, No. 1971, dated 29th November 1892.
" " the Commissioner, Southern Division, No. 36-P., dated 6th January 1893,
" " the Magistrate of Dharwar, No. 7215-94, dated 16th November 1892, enclosing letter from the Judge of Dharwar, No. 1786—1, dated 14th November 1892.
" " " of Bijapur, No. 4963, dated 22nd November 1892.
" " " of Kanara, No. 4579, dated 25th November 1892, enclosing letter from the Judge of Kanara, No. 11, dated 23rd November 1892.
" " " of Ratnagiri, No. S. R.-18, dated November 1892.
" " " of Kolaba, No. 38, dated 30th November 1892.
" " " of Belgaum, No. 24, dated 21st December 1892, enclosing letter from the Judge of Belgaum, No. 2191, dated 19th December 1892.
" " the Registrar, Bombay High Court, No. 117, dated 19th January 1893, enclosing minutes by Sir Charles Sargeant, C. J., and Fulton, Candy, Parsons, Starling, and Bayley, JJ.

North-Western Provinces Correspondence.

Letter from the Government of India (Home Department), to the Government of the North-Western Provinces and Oudh, No. 743, dated 31st May 1890.

Letter from the Government of the North-Western Provinces and Oudh to the Government of India (Home Department), No. 307, dated 2nd February 1891, with enclosures, *viz.*:—

Letter to Registrar, High Court, Allahabad, No. $\frac{1647}{\text{VI-598 B.}}$, dated 26th June 1890.

Circular letter to —
Judicial Commissioner, Oudh,
Judge of Allahabad,
" Benares,
" Lucknow,
Magistrate of Benares,
" Lucknow,
Legal Remembrancer,
Public Prosecutor, Allahabad,
— No. $\frac{1648}{\text{VI-598B.}}$, dated 26th June 1890.

Colonel G. E. Erskine,
Mr. W. E. Neale,
" F. W. Porter,
" Adams,
— No. $\frac{1649}{\text{VI-598B.}}$, dated 26th June 1890.

Letter from the Judge of Benares, No. 761, dated 18th September 1890, enclosing his letter to High Court, No. 755, dated 15th September 1890.
" Commissioner of Agra, No. $\frac{7510}{\text{XV}-28}$, dated 15th July 1890.
" " Benares, No. $\frac{7040}{\text{XIII}-307}$, dated 15th July 1890.
" Deputy Commissioner of Lucknow, No. 3368, dated 29th July 1890.
" Public Prosecutor, Allahabad, without number, dated 29th July 1890.
" Legal Remembrancer, No. $\frac{4226}{\text{F}-1107}$, dated 31st July 1890.
" Registrar, Allahabad High Court, No. 4169, dated 20th August 1890.

Letter from the Judge of Benares, No. 761, dated 18th September 1890, enclosing his letter to High Court, No. 755, dated 15th September 1890.
„ Magistrate of Allahabad, without number, dated 22nd September 1890.
„ Judge of Allahabad, No. 614, dated 22nd September 1890.
„ Secretary, Kashi Sujan Somaj, No. H. 99, dated 22nd September 1890.
„ Judicial Commissioner of Oudh, No. 1493, dated 29th September 1890.
„ Commissioner of Kumaon, No. $\frac{1858}{XIII-340}$, dated 7th July 1890.
„ Magistrate of Benares, No. $\frac{4}{XVII-29}$, dated 10th July 1890.
„ Commissioner of Lucknow, No. 4219, dated 14th July 1890.

Letter from the Government of the North-Western Provinces and Oudh to the Government of India (Home Department), No. 3007, dated 5th November 1891.

Letter from the Government of India (Home Department) to the Government of the North-Western Provinces and Oudh, No. 1108, dated 25th August 1892.

Letter from the Government of India (Home Department) to the Chief Commissioner of Assam, No. 744, dated 31st May 1890.

Assam Correspondence.

Letter from the Assam Administration to the Government of India (Home Department), No. 145-J., dated 14th January 1891, with enclosure:—letter from the Judge, Assam Valley, No. 1271, dated 17th November 1890, enclosing his office letters to the High Court—

No. 947, dated 24th June 1884.
„ 4T., „ 10th January 1885.
„ 63B., „ 2nd February 1888.
„ 508, „ 26th June 1888.
„ 167, „ 3rd September 1888.
„ 884B., „ 23rd November 1888.
„ 221V., „ 9th March 1889.
„ 7 T., „ 17th April 1889.

Letter from the Government of India (Home Department) to the Chief Commissioner of Assam, No. 1109, dated 25th August 1892.

Letter from the Assam Administration to the Government of India (Home Department), No. 4661-J., dated 11th October 1892.

Also various memorials and representations addressed to the Commission by local bodies and by certain individuals.

From H. J. S. Cotton, Esq., C. S. I., Chief Secretary to the Government of Bengal, to the Secretary to the Government of India,—No. 1523 J., dated the 25th March 1893. No. 219.

The Lieutenant-Governor has been furnished unofficially with a copy of the Report of the Jury Commission, and feels bound, in accordance with the recommendation of the Commission, to withdraw the Notification of this Government, dated the 20th October 1892, making certain alterations in the classes of cases which are triable by a jury in the districts to which the jury system has been extended, at once. His Honour would have taken action in this direction on his own authority were it not that he had already referred the question to the Government of India, and had acted under the authority of the Government of India in issuing the notification. He considers, therefore, that the notification should be withdrawn with the authority of His Excellency the Governor General in Council, and awaits the receipt of orders to this effect.

From C. J. Lyall, Esq., C. I. E., Secretary to the Government of India, to the Chief Secretary to the Government of Bengal,—No. 357, dated the 28th March 1893. No 220.

In reply to your letter No. 1523 J., dated the 25th instant, I am directed to say that the Governor General in Council authorizes the issue of a notification by His Honour the Lieutenant-Governor under section 269 of the Criminal Procedure Code, withdrawing the Notification of the 20th October 1892 by which certain changes were made in the classification of offences triable by jury before the Courts of Session in the Districts of the 24-Parganas, Hooghly, Burdwan, Murshidabad, Nadia, Patna and Dacca, and restoring the classification of offences so triable in those districts which was in force prior to the issue of that notification.

No. 221. From the Government of India, Home Department, to Her Majesty's Secretary of State for India,—No. 17, dated the 29th March 1893.

With reference to paragraph 7 of Your Lordship's Despatch No. 8 (Judicial), dated the 16th February last, and in continuation of our telegram of the 25th instant, we have the honour to forward, for Your Lordship's information, a copy of the Report of the Commission appointed at the suggestion of the Lieutenant-Governor to consider the question of trial by jury in Bengal. The Report was immediately communicated to Sir Charles Elliott, who in his Secretary's letter No. 1523 J., dated the 25th March, asked permission, in accordance with the recommendation of the Commission, to withdraw his notification of the 20th October 1892, thus restoring the state of things which existed prior to the issue of that notification. The required permission was granted, and a notification appears in to-day's *Calcutta Gazette* cancelling the notification of October. Copies of these letters are enclosed.

2. The recommendations contained in the Report of the Commission for amendments of the provisions of the Criminal Procedure Code relating to trial by jury with a view to prevent miscarriage of justice shall have our careful attention in communication with the several Local Governments, and we will address Your Lordship further on the subject before proceeding to legislation.

No. 222. From C. J. Lyall, Esq., C.I.E., Secretary to the Government of India, Home Department, to the Chief Secretary to the Government of Madras, and to the Secretary to the Government of Bombay, Judicial Department,—Nos. 545—546, dated the 6th May 1893.

* (To Madras) Home Department letter No. 256, dated 4th March 1893.
(To Bombay) Home Department letter No. 257, dated 4th March 1893.
† Despatch to Secretary of State, No. 32 (Judicial), dated 21st December 1892.
Despatch from Secretary of State, No. 8 (Judicial), dated 16th February 1893.
Letter, dated 24th March 1893, from Secretary to Jury Commission, and its enclosure.
Despatch to Secretary of State, No. 17 (Judicial), dated 29th March 1893.

With reference to the correspondence ending with * on the working of the system of trial by jury in Sessions Courts in $\frac{\text{Madras}}{\text{Bombay}}$ I am directed to forward, for the information of the $\frac{\text{Madras}}{\text{Bombay}}$ Government, a copy of the papers cited in the margin,† and to invite special reference to the Report of the Jury Commission submitted with their Secretary's letter of the 24th March.

2. The Government of India think it unnecessary at present to make any remarks on the Report of the Commission or the conclusions stated therein; but they will be glad to receive at a very early date the opinion of His Excellency the Governor in Council and the Honourable Judges of the High Court and any other officers whom His Excellency in Council may think it advisable to consult on the various proposals for amending the Criminal Procedure Code dealt with in the Report.

3. With reference to paragraphs 32 and 33 of the Report, I am to say that the Government of India are disposed to adhere to the view stated in this Department's letter of the 25th August last that Section 303 of the Code should be amended so as to empower the Sessions Judge to require a special verdict on particular issues of fact. The object is to enable the presiding Judge to ascertain, for his own guidance and (if necessary) for the information of the High Court, what elements of the charge have been established to the satisfaction of the jury. A charge of theft based on evidence of recent possession, may be taken as an apt illustration. In a case of this kind which actually occurred the jury had brought in a general verdict of not guilty, but it was subsequently ascertained that they were all of opinion that the property was stolen, and that the accused was in possession of it at the time alleged, but they refused to draw the inference that he was the actual thief. But if the case had been referred to the High Court upon the bare general verdict, it would probably have been assumed that the evidence as to the property being found on the accused had been thought untrustworthy. His Excellency the Governor General in Council will, however, be glad to receive the opinion of the $\frac{\text{Madras}}{\text{Bombay}}$ Government on this as on the other amendments.

4. I am also to enquire whether His Excellency the Governor in Council has any objection to Section 269 of the Code being amended so as to require that action under that section shall only be taken by Local Governments with the previous sanction of the Governor General in Council.

5. It would be inconvenient that any alterations should be made in the jury system as now established in the $\frac{\text{Madras}}{\text{Bombay}}$ Presidency pending consideration of the papers now forwarded; but I am to request that, with the permission of the Governor in Council, it may be stated in your reply—with reference to your letter No. $\frac{268}{614}$, dated $\frac{\text{6th February 1893}}{\text{27th January 1893}}$ —what, if any, modifications in the arrangements now obtaining in $\frac{\text{Madras}}{\text{Bombay}}$ are recommended by His Excellency in Council.

From C. J. LYALL, Esq., C.I.E., Secretary to the Government of India, Home Department, to the Chief Secretary to the Government of Bengal,—No. 547, dated the 6th May 1893. No. 223.

Despatch to Secretary of State, No. 32 (Judicial), dated 21st December 1892.
Despatch from Secretary of State, No. 8 (Judicial), dated 16th February 1893.
Letter dated 24th March 1893, from Secretary to Jury Commission, and its enclosure.
Despatch to Secretary of State, No. 17 (Judicial), dated 29th March 1893.

With reference to the correspondence ending with Home Department letter No. 357, dated 28th March 1893, on the working of the system of trial by jury in Sessions Courts in Bengal, I am directed to forward, for the information of the Bengal Government, a copy of the papers cited in the margin, and to invite special reference to the Report of the Jury Commission submitted with their Secretary's letter of the 24th March.

2. The Government of India think it unnecessary at present to make any remarks on the Report of the Commission or the conclusions stated therein; but they will be glad to receive at a very early date the opinion of His Honour the Lieutenant-Governor and of any other officers whom His Honour may think it advisable to consult on the various proposals for amending the Criminal Procedure Code dealt with in the Report.

3. With reference to paragraphs 32 and 33 of the Report, I am to say that the Government of India are disposed to adhere to the view stated in this Department's letter of the 25th August last that Section 303 of the Code should be amended so as to empower the Sessions Judge to require a special verdict on particular issues of fact. The object is to enable the presiding Judge to ascertain for his own guidance, and (if necessary) for the information of the High Court, what elements of the charge have been established to the satisfaction of the jury. A charge of theft, based on evidence of recent possession, may be taken as an apt illustration. In a case of this kind which actually occurred the jury had brought in a general verdict of not guilty, but it was subsequently ascertained that they were all of opinion that the property was stolen, and that the accused was in possession of it at the time alleged, but they refused to draw the inference that he was the actual thief. But if the case had been referred to the High Court upon the bare general verdict, it would probably have been assumed that the evidence as to the property being found on the accused had been thought untrustworthy. His Excellency the Governor General in Council will, however, be glad to receive the opinion of the Bengal Government on this as on the other amendments.

4. I am also to enquire whether His Honour the Lieutenant-Governor has any objection to Section 269 of the Code being amended so as to require that action under that section shall only be taken by Local Governments with the previous sanction of the Governor General in Council.

5. I am to say, with reference to paragraph 3 of Home Department letter to the High Court, Calcutta, No. 400, dated 27th March 1885, that the Honourable the Chief Justice and Judges have been addressed on the subject.

From C. J. LYALL, Esq., C.I.E., Secretary to the Government of India, Home Department, to the Secretary to the Government of the North-Western Provinces and Oudh, Judicial Department,—No. 548, dated the 6th May 1893. No. 224.

Despatch to Secretary of State, No. 32 (Judicial), dated 21st December 1892.
Despatch from Secretary of State, No. 8 (Judicial) dated 16th February 1893.
Letter, dated 24th March 1893, from Secretary to Jury Commission, and its enclosure.
Despatch to Secretary of State, No. 17 (Judicial), dated 29th March 1893.

With reference to the correspondence ending with Home Department letter No. 1108, dated 25th August 1892, on the working of the system of trial by jury in Sessions Courts in the North-Western Provinces and Oudh, I am directed to forward, for the information of the North-Western Provinces and Oudh Government a copy of the papers cited in the margin, and to invite special reference to the Report of the Jury Commission submitted with their Secretary's letter of the 24th March.

2. The Government of India think it unnecessary at present to make any remarks on the Report of the Commission or the conclusions stated therein; but they will be glad to receive at a very early date the opinion of His Honour the Lieutenant-Governor and Chief Commissioner and the Honourable Judges of the High Court and any other officers whom His Honour may think it advisable to consult on the various proposals for amending the Criminal Procedure Code dealt with in the Report.

3. With reference to paragraphs 32 and 33 of the Report, I am to say that the Government of India are disposed to adhere to the view stated in this Department's letter of the 25th August last that Section 303 of the Code should be amended so as to empower the

Sessions Judge to require a special verdict on particular issues of fact. The object is to enable the presiding Judge to ascertain for his own guidance, and (if necessary) for the information of the High Court, what elements of the charge have been established to the satisfaction of the jury. A charge of theft, based on evidence of recent possession, may be taken as an apt illustration. In a case of this kind which actually occurred the jury had brought in a general verdict of not guilty, but it was subsequently ascertained that they were all of opinion that the property was stolen, and that the accused was in possession of it at the time alleged, but they refused to draw the inference that he was the actual thief. But if the case had been referred to the High Court upon the bare general verdict, it would probably have been assumed that the evidence as to the property being found on the accused had been thought untrustworthy. His Excellency the Governor General in Council will, however, be glad to receive the opinion of the North-Western Provinces and Oudh Government on this as on the other amendments.

4. I am also to enquire whether His Honour the Lieutenant-Governor and Chief Commissioner has any objection to Section 269 of the Code being amended so as to require that action under that section shall only be taken by Local Governments with the previous sanction of the Governor General in Council.

No. 225. From C. J. LYALL, Esq., C.I.E., Secretary to the Government of India, Home Department, to the Chief Commissioner of Assam,—No. 549, dated the 6th May 1893.

With reference to the correspondence ending with your letter No. 4661-J., dated 11th October 1892, on the working of the system of trial by jury in Sessions Courts in Assam, I am directed to forward for your information a copy of the papers cited in the margin, and to invite special reference to the Report of the Jury Commission submitted with their Secretary's letter of the 24th March.

Despatch to Secretary of State, No. 32 (Judicial), dated 21st December 1892.
Despatch from Secretary of State, No. 8 (Judicial), dated 16th February 1893.
Letter, dated 24th March 1893, from Secretary to Jury Commission, and its enclosure.
Despatch to Secretary of State, No. 17 (Judicial), dated 29th March 1893.

2. The Government of India think it unnecessary at present to make any remarks on the Report of the Commission or the conclusions stated therein; but they will be glad to receive at a very early date your opinion and that of any officers whom you may think it advisable to consult on the various proposals for amending the Criminal Procedure Code dealt with in the Report.

3. With reference to paragraph 32 and 33 of the Report, I am to say that the Government of India are disposed to adhere to the view stated in this Department's letter of the 25th August last to the Bengal Government, a copy of which was forwarded to you with my letter No. 1109 of the same date, that Section 303 of the Code should be amended so as to empower the Sessions Judge to require a special verdict on particular issues of fact. The object is to enable the presiding Judge to ascertain for his own guidance, and (if necessary) for the information of the High Court, what elements of the charge have been established to the satisfaction of the jury. A charge of theft, based on evidence of recent possession, may be taken as an apt illustration. In a case of this kind which actually occurred the jury had brought in a general verdict of not guilty, but it was subsequently ascertained that they were all of opinion that the property was stolen, and that the accused was in possession of it at the time alleged, but they refused to draw the inference that he was the actual thief. But if the case had been referred to the High Court upon the bare general verdict, it would probably have been assumed that the evidence as to the property being found on the accused had been thought untrustworthy. His Excellency the Governor General in Council will, however, be glad to receive your opinion on this as on the other amendments.

4. I am also to enquire whether you have any objection to Section 269 of the Code being amended so as to require that action under that section shall only be taken by Local Governments with the previous sanction of the Governor General in Council.

5. The notification of the Bengal Government, dated the 20th October 1892, by which certain offences were removed from the cognizance of juries in the seven sessions divisions where that system of trial prevails, was, on receipt of the Report of the Commission, withdrawn by His Honour the Lieutenant-Governor, and the *status quo ante* restored pending consideration of the amendments in the law suggested in the Report. I am to request that similar action may be taken in regard to the notification issued by you in October last with reference to offences triable by jury in the Assam Valley Sessions Division.

From C. J. LYALL, Esq., C.I.E., Secretary to the Government of India, Home Department, to the Registrar of the High Court of Judicature at Fort William in Bengal, Appellate Side,—No. 550, dated the 6th May 1893. No. 226.

With reference to the correspondence ending with Home Department letter No. 215, dated 23rd February 1893, on the working of the system of trial by jury in Sessions Courts in Bengal, I am directed to forward, for the information of the High Court, a copy of the papers cited in the margin, and to invite special reference to the Report of the Jury Commission submitted with their Secretary's letter of the 24th March.

Despatch to Secretary of State, No. 32 (Judicial), dated 21st December 1892.
Despatch from Secretary of State, No. 8 (Judicial), dated 16th February 1893.
Letter, dated 24th March 1893, from Secretary to Jury Commission, and its enclosure.
Despatch to Secretary of State, No. 17 (Judicial), dated 29th March 1893.

2. The Government of India will be glad to receive at a very early date the opinion of the Honourable the Chief Justice and Judges on the various proposals for amending the Criminal Procedure Code made in the Report of the Commission.

3. With reference to paragraphs 32 and 33 of the Report, I am to say that the Government of India are disposed to adhere to the view that Section 303 of the Code should be amended so as to empower the Sessions Judge to require a special verdict on particular issues of fact. The object is to enable the presiding Judge to ascertain for his own guidance, and (if necessary) for the information of the High Court, what elements of the charge have been established to the satisfaction of the jury. A charge of theft, based on evidence of recent possession may be taken as an apt illustration. In a case of this kind which actually occurred the jury had brought in a general verdict of not guilty, but it was subsequently ascertained that they were all of opinion that the property was stolen, and that the accused was in possession of it at the time alleged, but they refused to draw the inference that he was the actual thief. But if the case had been referred to the High Court upon the bare general verdict, it would probably have been assumed that the evidence as to the property being found on the accused had been thought untrustworthy. His Excellency the Governor General in Council will, however, be glad to receive the opinion of the High Court on this as on the other amendments.

4. I am to say, with reference to paragraph 3 of Home Department letter No. 400, dated 27th March 1885, that the Government of Bengal and the Chief Commissioner of Assam have been addressed on the subject.

Telegram from Home, Simla, to the Chief Commissioner, Assam,—No. 550, dated the 6th May 1893. No. 227.

Letter goes to you to-day asking you to withdraw Notification issued by you in October last revising cases triable by jury before Sessions Court in Assam Valley. Please report when this is done and send copy of Notification.

From H. J. S. COTTON, Esq., C.S.I., Chief Secretary to the Government of Bengal, to the Secretary to the Government of India, Home Department,—No. 26J.—D., dated the 2nd May 1893. No. 228.

With reference to paragraph 38 of the report of the Commission appointed to consider and report on certain questions connected with trial by jury in Bengal, I am directed to submit, for the information of the Government of India, a copy of the papers noted in the margin from which it will be seen that the legal advisers of this Government are of opinion that Honorary Magistrates are "Judges" within the meaning of section 32 of the Code of Criminal Procedure and, as such, are exempt from liability to serve as jurors or assessors. I am to add that the opinion of the Advocate-General has been circulated for the guidance of Sessions Judges in the preparation of lists of jurors and assessors.

Letter No. 1313 dated the 30th March 1893, from the Sessions Judge of Hooghly.
Letter No. 1801J., dated the 14th April 1893, to the Legal Remembrancer.
Letter No. 77, dated the 20th April 1893, from the Legal Remembrancer, and of its enclosures.

From J. CRAWFORD, Esq., Sessions Judge of Hooghly, to the Chief Secretary to the Government of Bengal,—No. 1313 J., dated the 30th March 1893. No 229.

With reference to paragraph 38 of the report of the Jury Commission, published in the *Calcutta Gazette* of yesterday, I have the honour to set forth the grounds on which Honorary Magistrates have been exempted from service as jurors in this district. As these have not been noticed in the report, and as it seems to me that if effect is to be given to the view that "Honorary Magistrates as such should be included in all lists of jurors in the districts in which they reside," the law must be altered.

2. By section 406, Act X of 1872, "Judges and other judicial officers" were exempted from liability to serve as jurors or assessors. Honorary Magistrates were not held to be included in these terms, and they therefore came on the lists.

3. In section 320, Act X of 1882, instead of these words the word "Judges" alone appears; but this has to be construed with reference to the last clause of section 4 of the Act, a new provision then introduced into the Code for the first time, which runs as follows—"All words and expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code." By paragraph 1 of the same section the word "Judges" must therefore be taken to have the meaning given to it by section 19 of the Indian Penal Code, "unless a different intention appears from the subject or context."

4. So far from a different intention appearing from the context, it appears probable, from the omission in the latter Code of the words "and other judicial officers," that it was the intention that the Penal Code definition should apply to the word "Judges." In this view all Stipendiary Magistrates, all Munsifs, and all Subordinate Judges have, within my experience in all the districts in which I have served, been exempted from service as jurors or assessors.

5. The question of the liability of Honorary Magistrates to serve as such turns on the construction of section 13, Indian Penal Code, the second illustration to which distinctly includes (*vide* illustration *b* 1) "a Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment." If the definition be not held to include Honorary Magistrates as such, then on the very same grounds it must be held that it does not include judicial officers other than those "officially designated as Judges."

6. It would be most inconvenient and detrimental to the public service if these other judicial officers were liable to be called away from their courts to serve as jurors or assessors, and if there is any doubt as to the state of the law, it is desirable that it should be so altered as to make the intention of the legislature clear.

No. 230. From H. C. STREATFIELD, Esq., Under Secretary to the Government of Bengal, Judicial, Political, and Appointment Departments, to the Superintendent and Remembrancer of Legal Affairs,—No. 1801 J., dated the 14th April 1893.

Letter No. 1313, dated 30th March 1893, from the Sessions Judge, Hooghly.
Extract paragraph 38e from th Report of the Jury Commission, dated 24th March 1893.

I am directed to forward for your consideration the accompanying copies of the papers noted in the margin, regarding a question raised by Mr. Crawford, District Judge of Hooghly, whether, under the law, Honorary Magistrates are liable to serve as jurors. I am to say that the Lieutenant-Governor desires that, as the question involved is one of considerable importance you will be so good as to lay this reference before the Hon'ble the Advocate-General, and furnish the Government with Sir Charles Paul's opinion on it as well as your own.

No. 231. From T. T. ALLEN, Esq., Superintendent and Remembrancer of Legal Affairs, to the Chief Secretary to the Government of Bengal,—No. 77, dated the 20th April 1893.

In reply to your No. 1801 J. of the 14th instant, I have the honour to send herewith the opinion of the Advocate-General, which is identical with my own independent opinion, *viz.*, that Honorary Magistrates are covered by the word "Judges" in the Criminal Procedure Code, section 320, and thus are exempt from jury service.

2. The papers are herewith returned.

No. 232. Opinion by the Honourable the Advocate-General dated the 17th April 1893.

Under section 320 of the Criminal Procedure Code, "Judges" are exempt from liability to serve as jurors or assessors. The word "Judge" is not defined in the Criminal Procedure Code, and under the last paragraph of section 4 of that Code, all words and expressions used therein and defined in the Indian Penal Code, and not therein defined, shall be deemed to have the meaning respectively attributed to them by that Code. Under section 19 of the Indian Penal Code the word "Judge" denotes, amongst others, every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment. Under these circumstances I am of opinion that Honorary Magistrates are Judges within the meaning of section 320 of the Criminal Procedure Code and are as such exempt from liability to serve as jurors or assessors.

From H. LUSON, Esq., Under Secretary to the Government of India, Home Department, to the Chief Secretary to the Government of Madras, to the Secretary to the Government of Bombay, Judicial Department, and to the Secretary to the Government of the North-Western Provinces and Oudh, Judicial Department,—Nos. 685—687, dated the 19th June 1893. No. 233.

With reference to paragraph 38 of the Report of the Jury Commission forwarded with *, I am directed to transmit for the information of the Madras / Bombay / North-Western Provinces and Oudh Government copy of an opinion of the Honourable the Advocate General, Bengal, to the effect that Honorary Magistrates, are "Judges" within the meaning of section 320 of the Code of Criminal Procedure and as such are exempt from liability to serve as Jurors or Assessors.

* (To Madras) Home Department letter No. 545, dated 6th May 1893.
(To Bombay) Home Department letter No. 546, dated 6th May 1893.
(To North-Western Provinces and Oudh) Home Department letter No. 548, dated 6th May 1893.

From H. LUSON, Esq., Under Secretary to the Government of India, Home Department, to the Chief Commissioner of Assam,—No. 688, dated the 19th June 1893. No. 234.

With reference to paragraph 38 of the Report of the Jury Commission forwarded with the letter from this Department, No. 549, dated the 6th May 1893, I am directed to transmit for your information a copy of an opinion of the Honourable the Advocate-General, Bengal, to the effect that Honorary Magistrates are "Judges" within the meaning of section 320 of the Code of Criminal Procedure and as such are exempt from liability to serve as Jurors or Assessors.

From H. LUSON, Esq., Under Secretary to the Government of India, Home Department, to the Registrar of the High Court of Judicature at Fort William in Bengal, Appellate Side,—No. 689, dated the 19th June 1893. No. 235.

With reference to paragraph 38 of the Report of the Jury Commission forwarded with the letter from this Department, No. 550, dated the 6th May 1893, I am directed to transmit, for the information of the Honorable the Chief Justice and Judges, a copy of an opinion of the Honourable the Advocate-General, Bengal, to the effect that Honorary Magistrates are "Judges" within the meaning of section 320 of the Code of Criminal Procedure, and as such are exempt from liability to serve as Jurors or Assessors.

Telegram from the Chief Comr. of Assam, to the Secretary to the Govt. of India, Home Department,—No. 4341J., dated the 12th May 1893. No. 236.

Your 550 of sixth. Notification issues in to-morrow's Gazette cancelling Jury Notification of October last, copy being sent by post.

From F. C. DAUKES, Esq., Secretary to the Chief Commissioner of Assam, to the Secretary to the Government of India, Home Dept.—No. 85 L. L. / 4519 J., dated the 17th May 1893.

In continuation of my telegram No. 4341 J., dated the 12th May 1893, I am directed to forward, for the information of the Governor General in Council, copy of a Notification, No. 4279 J., dated the 11th May 1893, cancelling Notification No. 4662 J., dated the 11th October 1892, which restricted the system of trial by jury before the Court of Session in the Assam Valley Districts to certain offences only under the Penal Code. No. 237.

Notification by the Chief Comr. of Assam,—No. 4279J., dated the 11th May 1893. No. 238.

In exercise of the powers conferred upon him by section 269 of the Code of Criminal Procedure (Act X of 1882), the Chief Commissioner directs that, on and after the 1st day of June 1893, the trials of all offences of the following classes shall be by Jury before the Court of Session in the districts of Goalpara, Kamrup, Darrang, Nowgong, Sibsagar and Lakhimpur, which constitute the Judgeship of the Assam Valley Districts, that is to say:

Offences defined in the following Chapters of the Indian Penal Code, *viz.*,—

Chapter VII (Offences against the public tranquillity),
" XI (False evidence and offences against public justice),
" XVI (Offences affecting the human body),

Chapter XVII (Offences against property), and
" XVI (Offences relating to documents and to trade or property marks),

and abetments of, and attempts to commit, such offences.

2. Notification No. 4662 J., dated the 11th October 1892, published at page 622, Part II of the *Assam Gazette* of the 15th October 1892, is hereby cancelled.

No. 239. From the Honourable J. F. PRICE, C.S.I., Chief Secretary to the Government of Madras, to the Secretary to the Government of India, Home Department,—No. 1748 (Judicial), dated the 28th August 1893.

In response to your letter, dated 6th May 1893, No. 545, Judicial, I am directed to communicate to you the views of His Excellency the Governor in Council, of the Honourable the Judges of the High Court, and of certain selected officers upon the various matters discussed in the Report of the Commission appointed to consider and report on certain questions connected with trial by jury in Bengal. His Excellency in Council regrets the delay which has occurred in the transmission of this reply, but as the Courts were in vacation when your letter was received, it could not be avoided.

2. The first point to be considered is whether section 307 of the Code of Criminal Procedure should be amended so as to make it clearer—

(1) when Sessions Judges should refer cases to the High Court;
(2) what the High Court should take into consideration when disposing of references under section 307, Code of Criminal Procedure.

It is the opinion of the Commission that Sessions Judges should not be required to refer every case in which they disagree with the verdict to the High Court, but that they certainly should do so whenever they are decidedly of opinion that a failure of justice would otherwise occur. Further, the Commission considers that, when dealing with cases referred under section 307, the High Court should be required to form an independent opinion of the case upon the evidence.

The High Court and all the officers consulted agree with the views expressed by the Commission on this subject and they have the concurrence of His Excellency in Council.

This Government accordingly supports the proposal in paragraph 24 of the report, that section 307 of the Code should be amended in the following way:—

(1) By substituting for the words "so completely that he considers it" the words "and is decidedly" [not 'clearly' as suggested by the Commission] "of opinion that it is;"

(2) By inserting after the words "High Court" in the third clause the words "shall consider the entire evidence, giving due weight to the verdict of the jury and to the opinion of the Sessions Judge and of the dissentient jurors, if any, and."

3. The next question for consideration is whether offences against marriage should be triable by jury.

In this connection I am to invite attention to Mr. Galton's letter, dated 6th February 1893, No. 268, Judicial, in which it is stated that this Government does not consider it advisable to add to the list of offences which are triable by jury in this Presidency. As regards the particular class of offences now in question, the Commission shows excellent reasons in paragraph 29 of its report why they should not be tried by jury, and the Government concurs with the Honourable Sir T. Muttusami Aiyar that it will be time enough to think of extending the list of offences when the system of trial by jury, safeguarded as now proposed, is found to give complete satisfaction.

4. In paragraph 32 of the report the Commission deals with the question of amending section 303 of the Code of Criminal Procedure, in such a way as to empower the Sessions Judge to—

(1) obtain from the jury its opinion on parts of the evidence in order to enable him to learn the grounds for the verdict;
(2) question the jury as to the reasons for the verdict in view to deciding whether a reference to the High Court is called for.

The majority of the authorities consulted is opposed to amending section 303 in the manner indicated on the ground that anything approaching to a cross-examination of the jury is to be deprecated. The Government of India expressed a similar opinion in paragraph 8 of Home Department letter, dated 25th August 1892, No. 1105, Judicial; the Commission also is opposed to the amendment of section 303 in the manner suggested.

I am to say that His Excellency in Council concurs in thinking that the arguments which have been brought against the proposed amendment outweigh those which have been urged in its favour.

5. In the same paragraph (32) the Commission pronounces against a further proposal that section 303 should be so amended as to empower the Sessions Judge to direct the jury to return special verdicts upon issues framed by him.

This suggestion has been considered on a previous occasion and in Mr. Galton's letter, dated 6th February 1893, No. 268, Judicial, an opinion was expressed in favour of the amendment of section 303 so as to enable the Judge to take special verdicts regarding particular questions of fact and the general credibility of particular evidence.

Among the authorities now consulted by the Government, there is a consensus of opinion in favour of the amendment, and His Excellency in Council fully concurs with the Government of India that the vague assertion by the Commission that the amendment would be likely to create greater evils than it would remedy, ought not to be accepted as sufficient in the face of the obvious advantages which will result from the introduction of a system of special verdicts. It is understood that the Judge is to have the power of calling for verdicts upon special issues either before or after the general verdict is delivered. Mr. Justice Shephard, it will be observed, takes it to be the intention that special verdicts shall be called for only (1) after the general verdict has been given, (2) if the Judge disagrees with the general verdict.

6. In paragraph 34 of the Report the Commission suggests that jurymen should be classified as "special" and "common," subject to the proviso that special jurymen shall be liable to serve on common juries.

The object of this proposal is to provide for the selection of specially-competent jurymen in cases of peculiar difficulty or importance.

There is a consensus of opinion that the preparation of two entirely distinct lists of jurymen is inadvisable because—

(1) in many cases the supply of competent jurymen is so small that such a course would be impossible;

(2) the separation of the special jurymen from the common jurymen would appreciably lower the quality of common juries.

A few of the officers consulted have, however, no objection to the classification of jurymen as "special" and "common" on the understanding suggested by the Commission, namely, that special jurymen will be liable to serve on common juries.

On the whole His Excellency in Council considers it inexpedient to adopt the proposal of the Commission. The necessity for the change has not been made out and the list of offences triable by jury is so small that it would be extremely difficult to find any principle upon which the cases for special juries could be discriminated from those for common juries.

7. The question whether an appeal upon the facts against the verdict of a jury should be allowed is considered in paragraph 42 of the Report, and the Commission expresses an opinion adverse to allowing such an appeal.

The Government of India has adopted a similar view as stated in paragraph 9 of Mr. Lyall's letters, dated 25th August 1892, No. 1105, Judicial. Of the officers now consulted by this Government one only (Mr. Tate) has declared himself to be in favour of allowing an appeal upon the facts and even he would allow it only when the verdict is not unanimous.

This Government, however, concurs with the Government of India in thinking that the adoption of the proposal would greatly weaken the arguments for the continuance of the jury-system, and would therefore recommend that under no circumstances should an appeal upon the facts be permitted.

8. In paragraph 43 of the Report the Commission observes that it cannot see its way to recommending that provision should be made for requiring Sessions Judges to record *verbatim* their charge to the jury.

The question here touched upon is important, and it will be observed that three of the Honourable Judges of the Madras High Court are strongly of opinion that some such provision should be made.

On the other hand Mr. Mackenzie considers that this would necessitate adjournments which would not only result in delay but also expose the jury to the danger of having improper influences brought to bear upon it; he further dwells upon the importance of delivering the charge while the evidence is still fresh in the mind of the jury.

It seems to be generally conceded that the difficulties in the way of requiring the Judge to record the charge *verbatim* with his own hand are insuperable. At the same time the importance of having a complete record of the charge cannot be gainsaid. It appears to His Excellency in Council that the only way out of the difficulty is to have the charge taken down by a clerk in shorthand as it is delivered; at the same time it is doubtful if the supply of competent shorthand writers in this Presidency is at present sufficient to render this plan feasible. It will be seen from the accompanying Proceedings of this date that the High Court has been asked to make enquiries as to the possibility of procuring shorthand writers. Even if the supply is insufficient at present it would soon increase under the influence of a certain demand.

9. The Honourable Mr. Justice Davies, it will be seen, is of opinion that the Code should distinctly state what the charge to the jury shall contain, and that it should further provide that the particular evidence against each accused and the particular offence it would constitute against him shall be separately set forth to the jury. I am directed to commend these suggestions to the Government of India.

10. In paragraph 4 of your letter now under reply this Government is asked whether it has any objection to the amendment of section 269 of the Code of Criminal Procedure in such a way as to render the assent of the Governor General in Council necessary to any extension of the system of trial by jury.

On this subject I am to invite attention to paragraph 20 of the Despatch, dated 21st December 1892, No. 32, from the Government of India to the Secretary of State, and to say that the reasons against the proposal which are therein set out appear to His Excellency in Council to be conclusive.

11. Finally, and with reference to paragraph 5 of your letter under reply, I am to ask whether the Government of India would have any objection to the issue of a notification declaring that attempts to commit and abetments of offences which are now triable by jury shall also be triable by jury.

The following offences are at present triable by jury in this Presidency :—

Theft—Sections 379, 380, 382.
Robbery—Sections 392—395, 397—402.
Dishonest dealing with property—Sections 411, 412 and 414.
House trespass—Sections 451—459.
Breaking open a closed receptacle—Section 461.

In 1886 it was decided to make abetments of these offences also triable by jury and a Government order to this effect was issued, but it has recently been pointed out that, as no notification was published in the Gazette as required by section 269 of the Code of Criminal Procedure, the Proceedings of 1886 is destitute of legal force. In deference to the wishes of the Government of India this Government has refrained from remedying the formal defect by notifying the Proceedings of 1886 in the Gazette. But it is desirable that this should now be done, and it has also been represented that attempts to commit offences triable by jury should also be declared to be similarly triable.

No. 240. *Extract from the Proceedings of the Government of Madras, Judicial Department,—No. 1747 Judicial, dated 28th August 1893.*

Read again the following paper :—

G. O., dated 16th May 1893, No. 1022, Judicial.

G. O., dated 16th May 1893, No. 1022, Judicial.

Abstract—Referring, for remarks, to the Honourable the Judges of the High Court, the Advocate-General and certain officers, letter from the Government of India forwarding certain papers regarding the system of trial by jury in Bengal, and requesting opinion on the various proposals for amending the Criminal Procedure Code dealt with in the report on the Jury Commission.

Read also the following papers :—

No. 241. From G. T. Mackenzie, Esq., Sessions Judge, Kistna, to the Chief Secretary to the Government of Madras, dated Masulipatam, the 10th June 1893, No. 761.

I have the honour to reply to G. O., No. 1022, Judicial, dated 16th May 1893.

2. A Sessions Court must not be regarded solely from the narrow point of view of a police officer as a machine to pronounce convictions. It is not enough that a prisoner should have a fair trial. It is desirable that both he and the public should believe that he has had a fair trial. From this point of view the system of assessors and juries has its advantages. The presence in Court even of somnolent assessors, who, at the close of a case which they have not thoroughly heard, express a negligent opinion, at least involves publicity and the explanation in the vernacular of the points that arise in the case, and thus enables the public in Court to understand what is going on. So the trial before a jury as least ensures that the case has been heard in a manner intelligible to the audience who crowd to listen to a Sessions trial.

3. I have been Sessions Judge now for nearly six years, and one point that has forcibly struck me is that jurors pay much more attention to their duties than is given by assessors. The assessors know that their opinion is not decisive. They know that the Judge will not hesitate to differ from their opinion. They appear to me very often to say to themselves that if the accused is guilty the Judge is sure to convict, and that they themselves may safely obtain the reputation of being merciful. Jurors, on the other hand, know that their verdict is decisive, and they pay much more attention to the case.

4. For this reason I hope that section 307 will not be altered so as to compel a Judge to refer every case in which he differs. That would reduce jurors to the level of assessors, and jurors would quickly learn that there was a change.

5. Upon this point I beg to draw the attention of the Government to the case of *The Queen-Empress* v. *Guravadu*, I. L. R. XIII, Madras, 343. The High Court has directed Sessions Judges to refer every case in which a jury convicts against the opinion of the Judge. This is a direction which the High Court has no legal power to give. It is not warranted by section 307 and it will give rise to the "mischievous results" anticipated in paragraph 25 of the report. A Tanjore juror will say to his fellows:—"We may as well convict these dacoits, because the Judge is bound to refer the case if he does not agree with us."

6. Also, this direction at I. L. R. XIII, Madras, is one-sided. The Judge is not directed to refer every case of acquittal against his opinion. This leads me to remark that the Madras High Court thinks that the fault of juries is that they convict too readily, but the complaint in Bengal and Bombay is the exact opposite, that juries do not convict. For myself I must say that Masulipatam juries are slow to convict. This is a prosperous and peaceful corner of the district, and dacoity cases are brought in a hundred miles from the Kurnool frontier or from the Nizam's frontier, about which the Masulipatam juror knows nothing, so that he is slow to convict.

7. I think that the alteration of section 307, which is proposed in paragraph 24 of the report, is a good alteration. It leaves a discretion to the Judge and is not as rigid as the direction at I. L. R. XIII, Madras 343.

8. I hope that no rule will be passed compelling a Judge to write out his charge before he orally delivers it. I always attempt to do this, but it is not possible always to do it, and it is important that the charge be delivered at once while the attention of the jurors is fresh. Any such rule would necessitate often an adjournment until the morrow, which means that the jurors, dispersed to their homes, would be open to improper solicitations.

9. On this subject I beg respectfully to submit that the charges of Sessions Judges are criticised with undue severity. A charge is often delivered to a weary jury, and sometimes to a jury who evidently have long since made up their minds in the same direction as the Judge has made up his. In such circumstances, a Judge is prone to deliver a very brief charge, but the charge afterwards is scrutinised by the High Court and is expected to contain a sufficient narrative of the facts of the case and a discussion of each point of law. I have especially in mind a case in which the jury and myself had long since made up our minds that the prisoner was innocent. The Public Prosecutor saw this and, after saying a few words, sat down. I had then to read to the impatient jury the long charge which I had written for the satisfaction of the High Court. I submit that in criticising a charge, it ought to be remembered that the primary object of a charge is to guide the jury aright, and that the Judge on the spot knows best how much guidance the jury require. The secondary object is to give information to the High Court.

10. I think that special verdicts are desirable. As an instance I may quote the difference of opinion in this district on the meaning of section 401 of the Penal Code. The District

Magistrate and Police Superintendent think that this section applies to men born and bred in the wandering tribes of Yanadis and Yerikulas. It is true that these tribes habitually steal, but these men never knew any other home. They have their wives and children with them in the encampment. I hold that section 401 does not apply to such men and was intended to meet the case of men who joined a gang of thieves. I so charged the jury in two cases committed to the Sessions and the juries gave verdicts of "not guilty." The Public Prosecutor moved the High Court, but the High Court refused to interfere. In such cases a special verdict on the facts might have been taken and the doubtful question of law might have been referred to the High Court.

11. If a class of special jurors is selected, it will lower the status of common jurors unless the special jurors take their share of the ordinary work. When I came here in 1887 I found that the list had been divided into an upper class of jurors and a lower class of assessors, and that the two classes were kept separate. Jurors never served as assessors and looked down on assessors. The assessors were considered to be an inferior class of men. I abolished this distinction and amalgamated the two lists.

12. I beg to suggest that the Executive Government can improve matters by insisting upon District Magistrates taking more trouble in the preparation of the jury list. The Judge can do little, for he cannot know the people of the district in the way in which the District Magistrate knows them. Moreover, the District Magistrate can have the assistance of the Superintendent of Police and of the Deputy Collectors and Tahsildars in discussing the persons to be placed on the list. But the list appears to be prepared in the Collector's office as a matter of routine by some subordinate, and the District Magistrate himself appears to me not to have seen the list until he comes to the Sessions Court to sit with the Judge to hear objections. Then the idea of some District Magistrates seems to be that they are to sweep as many fish as possible into the net. I think that if the Collector, Police Superintendent, Head-quarter Deputy Collector and Head-quarter Tahsildar met to discuss the list beforehand, a very much better list could be prepared. I may give an instance of what I mean. Last April I sat in Court with the Acting Collector to hear objections to the jury list. I noticed that the occupation of one man was given as "pleader's gumastah." I said: "That is a most objectionable class of man to be placed on the list." The Acting Collector said: "Then a man has only to call himself a pleader's gumastah and you will strike him off the list."

13. I am averse to extending jury trials to murder cases and marriage cases. In murder cases, assessors shrink from saying that an accused is guilty, and in marriage cases, specially in cases under the Indian Christian Marriage Act, there are sometimes very intricate questions of law.

No. 241. OPINION OF THE HON'BLE MR. J. H. SPRING-BRANSON, ADVOCATE GENERAL, MADRAS.

1. The discussion of the jury system as carried out in the Sessions Court in the interior may be roughly divided under two main heads, *viz.*,—

(*a*) the extension or restriction of the system both with regard to localities and to the classes of offences to which it has from time to time been applied; and

(*b*) amendment of the Criminal Procedure Code so as to minimise the risk of failure of justice due to the causes, or alleged causes, referred to in the report.

I understand the reference to me to be confined to the second and more limited head.

2. The proposals for amending the Code dealt with in the report relate to the composition of juries; charges to juries; reasons for verdicts; amendment of section 307, Criminal Procedure Code; and appeals against the decision of a jury.

3. With regard to the number of jurors, their ages, the area of their selection, exemption from service on juries, and the seclusion of those serving as jurors during a trial and until delivery of their verdict, I see no reason for making any alteration in the existing law.

The establishment of special juries is in my opinion uncalled for and inexpedient. What is required is the improvement of existing juries by careful selection of jurors and the creation of those feelings of respect for the office and responsibility in the discharge of the duties of a juror which I fear do not at present exist to any great extent.

4. The importance of the "charge" to a jury cannot be overrated, but such guidance can only be secured by careful selection of Judges, not by any amendment of the Code of

Criminal Procedure. That Code provides for the heads of his charge to the jury being recorded by the Judge.

5. It is very desirable that the reasons of the jury for their verdict should be elicited without subjecting the jurors to a cross-examination or to undue catechism by the presiding Judge. I think that Sessions Judges should be empowered to require from the jury special verdicts as suggested, but the power conferred should be so clearly stated and limited to the object sought as to preclude the chance even of the inquiry degenerating into a cross-examination.

6. I think that the amendment of, and addition to, section 307, Criminal Procedure Code, suggested in paragraph 24 of the report under consideration, should be made. At present, and until juries in this country prove that they have that respect for their office and sense of responsibility which they ought to possess, there ought to be some protection against "perverse verdicts."

7. On the other hand, I think that, ordinarily, the verdict of a jury should be final and that no appeal therefrom should be allowed.

From R. S. BENSON, Esq., Sessions Judge, South Malabar, Calicut, to the Chief Secretary to the Government of Madras,—No. 160, dated the 13th June 1893. No. 242.

With reference to G.O., dated the 16th May 1893, No. 1022, Judicial, I have the honour to submit the following remarks on the proposals made by the recent Jury Commission for the amendment of the law relating to trial by jury in India. The enclosures are returned, as requested.

Section 307, Criminal Procedure Code.

2. I think that the wording of section 307 of the Criminal Procedure Code may with advantage be revised, with a view to make its intention more clear and to leave less room for that diversity of practice on the part of both Sessions Judges and of the High Court, which has undoubtedly hitherto existed in acting under its provisions. I would substitute the words "and is clearly of opinion that it is" for the words "so completely that he considers it" in the first paragraph of the section which deals with the duty of the Sessions Judge.

In the third paragraph which deals with the duty of the High Court, I would add after the words "High Court" and before the words "may exercise" the words "shall consider the entire evidence, giving due weight to the verdict of the jury and to the opinion of the Sessions Judge and of the dissentient jurors, if any, and." It is believed that these words would state the practice as now followed by the best Judges, and would leave no room for diversity of opinion as to the intention of the Legislature. I am wholly opposed to the proposal which has been made in some quarters that it should be the duty of the Sessions Judge to refer to the High Court *every case* in which he differs from the view taken by the jury. I not infrequently differ from the jury without being so confident that I am right and that they are wrong as to lead me to think it necessary, or even desirable for the ends of justice, to submit the case to the High Court. To refer such cases to the High Court would weaken, or destroy, that sense of responsibility on the part of the jury which it is so desirable to encourage and strengthen; it would impose a large mass of additional work on the High Court and would lead to no improvement in the administration of justice, for the High Court would hardly ever interfere, and if it did interfere, it would probably be wrong in as many cases as right.

Appeal on the facts.

3. The same considerations lead me to conclude that the proposal to allow an appeal on the facts against the verdict of the jury is altogether undesirable. It would weaken the sense of responsibility on the part of the jury, and increase the work of the High Court, without, as I venture to think, securing justice in a larger number of cases. The jury and the Sessions Judge have the immense advantage of hearing the evidence of each witness as it is given and of observing his demeanour. The Sessions Judge is almost invariably a man with from 15 to 30 years' experience of native evidence and of native customs and modes of thought. If he and a jury of natives agree as to the verdict, it is wholly unlikely that a Bench of the High Court would, on the bare record and without the special advantages possessed by the Judge and jury, be able to arrive at a more correct conclusion as to the facts. It must not be forgotten that one at least of the Judges of the High Court Bench may, and often will, be a Judge fresh from England, whose acquaintance with native evidence and customs is necessarily

small and obtained chiefly at second hand. If the Judge's disagreement with the jury is of such a kind that he does not consider a reference necessary in the interests of justice, the probability of useful interference by the High Court is only one degree less remote. If the Sessions Judge does consider a reference necessary, he can make it under section 307, and if the High Court then deals with the whole case on its merits, as proposed in paragraph 2 *supra*, giving due weight to the opinion of the jury and of the Judge and of any dissentient jurors, I think there will be every reasonable safeguard against a failure of justice.

Section 303, Criminal Procedure Code.

4. I am opposed to anything like cross-questioning of juries as to their reasons for arriving at their verdict. It might often be impossible to record them fairly or intelligibly without writing a statement, amounting to a judgment, for each juror, but I think that section 303 of the Criminal Procedure Code should be amended so as to enable the judge to require the jury to give a special verdict on particular issues of fact. Such a course will rarely be necessary, but it may be so occasionally, to enable the Judge to appreciate the ground on which the general verdict rests, and sometimes, too, in order to assist him in deciding on the appropriate penalty. Such a case occurred in a trial held before me yesterday. Three prisoners were being tried by a jury for dacoity. The acts of the prisoners might have been either simple extortion (section 383), or aggravated extortion (section 386), or robbery (section 390), or dacoity (section 391), according to the view taken of the violence used and the number of persons taking part in the extortion. The jury found the prisoners not guilty of dacoity, but found that one of them was guilty of extortion. I was able under section 303, Criminal Procedure Code, as it stands, to ascertain that the verdict was "guilty of simple extortion" (punishable under section 384, Indian Penal Code), not aggravated extortion (punishable under section 386), but I was unable to frame a special issue as to the violence used, though I would have valued a finding by the jury on that matter as a guide to me in determining the penalty appropriate to the offence.

Section 269, Criminal Procedure Code.

5. I do not see any objection to section 269 of the Criminal Procedure Code being so amended as to require that action under that section shall only be taken by Local Governments with the previous sanction of the Governor General in Council. Action under it will always be taken with deliberation. Considering the far-reaching political effects of such action and the general interest likely to attach thereto, it is probably desirable that it should be approved by the Governor General in Council before it is finally taken.

Special Juries.

6. For the reasons stated in paragraph 18 of the letter of the 21st December 1892 of the Government of India to the Secretary of State, I think (though with some hesitation) that special juries are inadvisable at present. If adopted, they should be sparingly resorted to and the special jurors should certainly not be excluded from the general jury list, but service as a special juror should give exemption from service on an ordinary jury for six months.

Extension of trial by jury.

7. I am uncertain whether the present reference invites my opinion as to whether the system should be extended in this Presidency to a larger number of offences than are at present triable by juries. My opinion has been expressed in the Criminal Administration Reports of the past five years and in special reports. I think that the system "works fairly well on the whole" and is likely to work better as time goes on. I neither decry nor extol it. It fails when it does fail not so much from the corruption or perversity of the jury as from deficient mental power in dealing with a great mass of evidence as it affects each of many prisoners who are being tried together, as in some cases of dacoity. There would, perhaps, be somewhat fewer failures of justice if the system were abolished, but even of this I am not sure. The collateral and political advantages of the system are, however, in my opinion, so important that I would rather see the system extended than curtailed. If it is determined to extend it, the offences to which it should be first made applicable are in my opinion the following:—Sections 363 to 369, 372 and 373 (kidnapping and abduction); section 376 (rape), sections 403 and 404 (criminal misappropriation); and sections 426 to 432, 434 to 436, and 440 (mischief) together with attempts to commit, and abetments of, these offences.

I may take this opportunity of bringing to notice that, though abetments of offences triable by jury in this Presidency are also triable by jury (G. O., No. 2477), dated 16th September 1886 (Judicial), I am unable to find any notification directing the trial by jury of attempts to commit such offences. This is an omission for which there appears to be no reason.

From H. W. FOSTER, Esq., Registrar of the High Court of Judicature, Appellate Side, Madras, to the Chief Secretary to the Government of Madras,—No. 1592, dated the 16th June 1893. No. 243.

With reference to G. O., dated the 16th ultimo, No. 1022, Judicial, forwarding certain papers regarding the system of trial by jury in Bengal, and requesting the opinion of the High Court on the proposals for amending the Criminal Procedure Code dealt with in the report on the Jury Commission, I am directed to submit herewith a transcript of the minutes recorded by the Honourable the Chief Justice and Justices Sir T. Muttusami Aiyar, Shephard and Davies.

2. Any minutes that may be recorded by the Honourable Mr. Justice Best will be duly submitted.

ENCLOSURE.

Minutes. No. 244.

THE CHIEF JUSTICE.—I am of opinion that the suggested alteration of section 307, Criminal Procedure Code, is desirable. I see no objection to the proposed amendment of section 303 of the Code empowering the Sessions Judge to require a special verdict on particular issues of fact.

JUSTICE SIR T. MUTTUSAMI AIYAR.—I think it very desirable to amend, as suggested by the Jury Commission, section 307 of the Code of Criminal Procedure. The wording of that section, as it stands at present, is somewhat obscure, and has given rise to the construction that English precedents are intended to be followed in all cases in regard to the finality of the verdict of the jury and that such verdict is absolutely conclusive on matters of fact. The intention, however, of those who framed section 307 was, as explained by the Commissioners, that the verdict should be open to be revised by the High Court on a reference made by the Judge in those cases in which it is clear upon the evidence that it is manifestly erroneous and has resulted in failure of justice. The erroneous construction put upon the section by the several High Courts is due partly to the use of the words "so completely, etc.," and partly to the absence of a clear indication of the true intention of the Legislature. The proposed amendment tends to remove both these defects and to execute the true intention. On this ground I am of opinion that it is worthy of adoption.

Another question which I have considered in this connection is whether section 307, if amended as proposed, would provide an adequate safeguard against possible miscarriage of justice from erroneous verdicts of the jury on questions of fact. I have always considered that it is not desirable to abolish trial by jury and that it is sufficient to safeguard it. Referring to section 418, Code of Criminal Procedure, I observe that as against failure of justice from errors of law, an appeal is allowed to the High Court. Thus in cases in which the exposition of law by the Judge is inaccurate or in which he misdirects the jury or omits to direct them on a material point, and also in cases in which the verdict is perverse or rests on no legal evidence or on a mere scintilla of such evidence, the best remedy known to the Code of Criminal Procedure is provided. As regards erroneous findings of fact, however, the section follows English precedents generally and declares that they are final. Thus in cases in which the Judge concurs in the verdict or in which, though he disagrees with the verdict and does not come upon the evidence to the same finding, he is unable to say that the verdict is clearly wrong, or that it is one which no reasonable men acting with care and caution ought to have come to, the English doctrine of the finality of the verdict is maintained. I do not think it unsafe to adopt what is substantially the concurrent finding of the jury and the Judge as to the justice of the verdict as final and conclusive. But in that class of cases in which the verdict has clearly occasioned failure of justice, section 307, as proposed to be amended, authorises the Judge to refer them to the High Court, and the High Court to consider the evidence and to alter or set side the verdict when it agrees with the Judge. To this extent the law in India departs from the English law on the subject. In effect the section introduces an exception to the rule of the finality of the verdict of the jury and makes it liable to be set aside if the High Court should, upon consideration of the evidence, come to the conclusion that justice has clearly miscarried. Having regard to the fact that trial by jury in the form in which it is regulated by the Code of Criminal Procedure was not an indigenous institution and only recently introduced into India, I am of opinion that a departure from the English precedent to the extent indicated above is nothing more than what the paramount claims of justice demand.

As regards section 303, I see no objection to amending it so as to enable the Judge to require a special verdict on particular issues of fact. On the other hand, I venture to think that such amendment is an additional safeguard. It is not clear to me how the amendment is likely to initiate a system of cross-examining the jury as to grounds of decision. In his charge to the jury the Judge is bound to tell them what material issues of fact arise for decision in each case under trial, and what the findings of the jury ought to be on the several issues to warrant either a conviction or an acquittal. This being so, the power to call for a special verdict on particular issues of fact will only enable the Judge to see that effect is given to his directions and accustom the jury to consider whether their verdict is the outcome of their findings on the several issues. I do not, however, understand the amendment to permit the jury being questioned as to the reasons for their finding on each issue, and there appears to me, therefore, no weight in the objection that the power to call for a special verdict will end in initiating a system of vexatious cross-examination as to the reasons of the decision of the jury.

Another defect in the existing law is the absence of a *verbatim* record of the Judge's charge to the jury. Admitting this to be a defect, the majority of the Commissioners consider that it is not practicable to remedy it. The heads of charge the Judges now submit to the High Court are in the nature of judgments written several days after the case is orally decided and are not a satisfactory substitute for the actual charge as interpreted to the jury in their own vernacular. It seems to me to be feasible to remedy this defect. A shorthand writer may be attached as a clerk to each Court, and with his assistance an accurate record of what was actually said to the jury at the time may be prepared and preserved so as to afford increased facilities to the Appellate Court towards ascertaining whether there has really been a misdirection.

As regards the class of offences triable by the jury, I am inclined to think that the classification adopted in this Presidency is open to amendment; but I do not desire to suggest any addition to those offences until the system of trial by jury with the safeguards now proposed and explained shall have been found to give complete satisfaction.

As for special juries, it seems to me that the recommendation made by the Jury Commission in paragraph 34 of their report sufficiently obviates the inconvenience pointed out by the Government of India.

MR. JUSTICE SHEPHARD.—The most important proposals on which our opinion is asked relate to sections 303 and 307 of the Criminal Procedure Code. I would strongly deprecate any proposal to give Sessions Judges a general power to examine the jury as to the ground and reason for their verdict, but I do not see why a Sessions Judge should not be empowered, after a verdict with which he does not agree has been given, to put specific issues to the jury of a general character. For instance, in such a case as that stated by the Government of India (paragraph 3) there might be (1) a question as to whether any theft was committed; (2) a question as to recent possession; (3) a question as to the inference to be drawn from it, and further, (4) a question might arise on evidence adduced to prove an *alibi*. It seems to me, it would be proper and unobjectionable to ask the jury questions of this sort. The answers to them would afford great assistance as well to the Sessions Judge in deciding what actions he should take as to the High Court in case of a reference. The power to put questions of the kind stated would be particularly useful in the case of forgeries when such offences are triable by a jury, for the prevailing notions about this offence are not in harmony with our English ideas, and a jury would be quite capable of returning a verdict of not guilty on such a charge, although they believed that the accused had altered the document in such a manner as to make him clearly guilty of forgery. Other illustrations might no doubt be given.

Provided that it is made clear that the Judge is not to cross-examine the jury about the grounds on which they have arrived at their verdict, and that the questions are directed to ascertaining their opinion on the fundamental issues which the case involves, I think the proposed amendment of the law would be decidedly useful.

With regard to the proposed amendment of the first paragraph of section 307, although the alteration of the words is slight, I think it may perhaps tend to relieve Sessions Judges of the difficulties which hitherto, apparently, they have felt. I fully agree with what the Commissioners say in paragraph 25 of their report, being of opinion that if jury trial is ever to succeed, it is absolutely essential that the responsibility should be with the jury, and that heir verdict should not be invalidated or open to question by the mere fact that it does not command the assent of the Judge. Doubtless there will be erroneous and unjust verdicts, but that is the price which has to be paid for the institution of trial by jury.

As regards the power of the High Court on a case being referred by a Sessions Judge, I think it might be well to define it in some such terms as those proposed by the Commissioners (paragraph 24). In Madras, it has certainly been the practice to interfere with a verdict only when it is clearly shown to be perverse or unreasonable. The risk of injustice will, I think, be materially diminished by giving the Court power to deal with referred cases in the same manner as they do with cases tried by a Judge and assessors. Although the existence of such a power tends to qualify the finality of the verdict, it still leaves it on a level distinctly higher than that of the opinion of assessors.

These provisions are designed to guard against the infirmity of juries, and provide no safeguard against the mistakes which may be made by the Judge.

In my opinion, one reason among several why trial by jury has been a comparative failure is the inexperience and want of skill on the part of the Sessions Judges, many of whom rarely have an opportunity of presiding at such a trial. Extension of the system may do something to remedy this defect, but the fact must remain that the difficult art of presenting a case to a jury is not likely to be acquired by the average Judge. This being so, and in the absence of a bar which may be relied upon to take note of any misdirection on the part of the Judge, it seems to me of greatest importance that a full report of the Judge's summing up should be secured in order that the High Court may be able to see whether there has been a misdirection. I do not understand how there can be any difficulty in the matter except from the want of competent shorthand writers, which, however, is a want that would very soon be supplied.

Section 307 of the Criminal Procedure Code being under discussion, I may perhaps be allowed to take this opportunity of making some further observations upon it. In the case of trial by jury, the conviction or acquittal, unless set aside by the High Court, ought surely to be the act of the jury, and it is only because the case is submitted that judgment is not recorded accordingly. When on a case being submitted, the High Court resolves to set aside the verdict, there must necessarily be a conviction or acquittal by the High Court. But in the contrary case when the High Court disagrees with the Judge and does not disapprove the verdict, the conviction or acquittal, as the case may be, stands good, and all that is required is that the suspended judgment should be recorded and, if necessary, sentence passed. It seems anomalous to say, as the last clause of the section does that the Court acquits or convicts a man already acquitted or convicted by the verdict of a jury.

With regard to the sentence also it may be a question whether power should not be given to the High Court to direct the Sessions Judge to pass sentence.

Mr. Justice Davies.—I endorse the views of Mr. Justice Shephard in their entirety and especially with regard to an accurate record being kept of the Judge's summing up. I may mention that for the past 4 or 5 years, as Sessions Judge of Tanjore, I invariably had my charges to the jury recorded in shorthand by a clerk and his transcript, subject, of course, to correction by me was treated as the record of the heads of charge directed to be kept under the last clause of section 367 of the Code of Criminal Procedure. It seems to me there would be no practical difficulty in requiring all Courts of Session in this Presidency to adopt a similar course. But should it be found impracticable anywhere, I would strongly recommend, as suggested by Sir Romesh Chunder Mitter in paragraph 4 of his minute, that it should be made obligatory upon the Judge to write out his summing up before he proceeds to charge the jury. Objection as to delay should count as nothing against the paramount importance of knowing exactly what the Judge did say to the jury.

Further, to ensure that the charge to the jury should be complete, I would venture to urge that it be laid down in distinct terms what the charge is to contain, just as in the no more important case of the judgment it is laid down (section 367, Code of Criminal Procedure) what its contents should be. It is in regard to trial, where several prisoners are concerned that the general opinion is the jury are apt to fail in proper discrimination. It should therefore be made a special rule that in cases where more than one accused is under trial, the particular evidence against each accused, and the particular offence it would constitute as against him, should be separately set forth in the charge. Some Judges never think of doing this, but it is, in my opinion, a most essential direction and should be enforced.

From H. W. Foster, Esq., Registrar of the High Court of Judicature, Appellate Side, Madras, to the Chief Secretary to the Government of Madras,—No. 1620, dated the 27th June 1893. No. 245.

In continuation of my letter, dated the 16th instant, No. 1592; I am directed to forward herewith a transcript of the minute recorded by the Honourable Mr. Justice Best on the pro-

posals for amending the Criminal Procedure Code dealt with in the report of the Jury Commission.

No. 246.

Minute.

MR. JUSTICE BEST.—I am decidedly in favour of the amendment of section 307 of the Code of Criminal Procedure in the manner suggested in paragraph 24 of the report of the Jury Commission. I am also of opinion that the law should be altered so as to allow the Judge to put to the jurors, after the verdict is delivered such questions as may be thought necessary to enable him to determine whether he should refer the case to the High Court.

I see no necessity for a list of special jurors—nor is the material for two lists available in the present condition of the mofussil of this Presidency.

I think the number of the jury should not be less than five and that the law on this head requires no alteration. Nor do I see any necessity for alteration of the law as to the age of jurors. As to the area of selection, if I mistake not, in this Presidency, it is still fixed by the Government, notwithstanding the declaration in section 319 of the Code as to the *liability* to serve of all male persons of the prescribed age residing within the district.

No. 247. From W. J. TUTE, Esq., Acting Sessions Judge, Salem, to the Chief Secretary to the Government of Madras, —No. 415, dated the 27th June 1893.

I have the honour to reply to G. O., No. 1022-Judicial, dated 16th ultimo, calling for my opinion on the jury question.

2. The first suggestion discussed by the Commissioners (in paragraph 32 of their report) is whether section 303 of the Criminal Procedure Code should be so amended as to enable a Sessions Judge to ascertain the opinion of a jury on portions of a case submitted to them. I am clearly of opinion that this should be done. The Commissioners deprecate—and rightly—anything like the cross-examination of a jury. But such appearance of cross-examination would, in my opinion, be avoided (*a*) by allowing the Sessions Judge to ask the jury the necessary questions *before* their final verdict of guilty or not guilty is delivered (though, of course, only at the close of the trial and charge), and (*b*) by defining in the statute the nature and scope of such questions.

3. I give an example. Take a case of dacoity brought against five prisoners, A, B, C, D, and E. Against A and C there is only the evidence of witnesses who say they identify them as the actual dacoits; against B and D there is only evidence of recent possession of property stolen; against E there are both kinds of evidence. I would permit the Judge to put the following questions :—

(1) Having regard to the definition of "dacoity" as now explained to you, do you find that a dacoity really took place?

(2) If you do, are you satisfied with the evidence of identification against A, C and E, or against any of them (if so, against which)?

(3) Do you find that the property produced was found in the (exclusive) possession of B, D and E, or in that of any of them?

(4) Was that property, to their knowledge, stolen in the dacoity?

(5) Do you find A guilty or not guilty? (Similar question in respect of each prisoner.)

I fail to see that any one of questions 1, 2 3 and 4 can, if put *before* question No. 5, be called a "cross-examining" question (for such questions tend to *form*, not *shake*, an opinion), while I am certain that the putting of such questions and the recording thereof and of the answers given to them (such recording is, of course, imperative and should be done *at the time*) would not only simplify and accelerate the work of the High Court in disposing of cases referred to them, but enable the Sessions Judge to see clearly what cases he ought to refer.

4. It may be said that it will be difficult to word the section so as to regulate the nature of the questions to be asked. But a little must always be left to the common sense of the presiding Judge. And it will be in every case open to the High Court in revision to point out that the questions were wrongly framed and put. In fact, the High Court would in this way be enabled to see into the working of the Judge's mind and into the real disposal of the case far better (as I think) than where, as at present they are only aided by the perusal of the prescribed abstract charge; while on the other hand, assuming the Judge's questions rightly put, the answers given to them by the jury would, at a glance, disclose any weakness in logical reasoning or perversity in finding. It is precisely the difficulty jurors feel in expressing a logical conclusion (see the words used by the Commissioners) which the above proposal will obviate by assisting them in doing so.

5. It must also be pointed out that the Commissioners have failed, in my humble opinion, to see that, *even now* a referred case can legally be and to a great extent is, re-heard by the High Court on the evidence. Their remedy (*cf.* clause 2 of paragraph 32) is, therefore, no adequate remedy at all.

6. The above remarks and proposal render wholly unnecessary anything like a "special verdict" on issues framed—a procedure cumbrous in itself and savouring rather of the Civil than of the Criminal Law.

7. In the Madras mofussil, special juries (except in the case of the trial of European British subjects) are in my opinion, unnecessary while a special jury list would be very small, and at the same time excludes perhaps for years together from ordinary juries the very persons most fitted to serve on them.

8. I agree with the Commissioners in thinking that the statutory list of exemptions from jury service should be carefully looked into. There is, I find, a tendency both on the part of the legislature and on that of heads of departments to withdraw Government servants from the work. Not seldom in this district, I received applications from officers (such as the Executive Engineer, District Forest Officer, Treasury Deputy Collectors, etc.,) asking for the exemption on the ground of "public duty" of some one of their clerks or accountants who has been summoned to serve. I am of opinion that this should be legally discountenanced, and that only persons who produce a certificate of illness from a Government Medical Officer should be exempted at any Sessions. The result of the broad exemptions in the Code and of the frequent applications to excuse particular persons from service, is the weakening of the jury list to (I cannot but think) the permanent disadvantage of the administration of criminal justice which administration is, after all, one of the most important duties of the State.

9. As to the right of appeal on the facts. It would be contrary to the essence of the whole jury system to allow this where the jury are unanimous. But I am inclined, after some consideration, to think it should be allowed where the verdict is only that of a majority. In such cases it might be laid down that the Judge should ask the prisoner at the termination of the trial whether or not he intends to appeal; and I would also permit the appeal to be laid before the Sessions Judge, who should be then bound to refer the case (and appeal memorandum) to the High Court with his opinion on the facts. I suggest this procedure on the grounds (*a*) that it would save time and thus promote rapid finality, and (*b*) that it would facilitate disposal by the High Court.

10. I agree in the Commissioner's proposed amendments of section 307, Criminal Procedure Code. They give the Sessions Judge more latitude in referring cases, and wisely emphasize by enactment what, I believe, is now more or less the actual practice of the various High Courts.

11. No opinion of mine seems necessary on paragraph 4 of the Government of India's letter, No. 545, under reference, the question therein raised being exclusively one affecting the powers of Government.

From LEWIS MOORE, Esq., Sessions Judge of Bellary, to the Chief Secretary to the Government of Madras,—No. 1287, dated the 12th July 1893. No. 248.

I have the honour, in reply to G. O. No. 1022-Judicial, of the 16th May 1893, to report as follows.

2. The Commission propose to make certain amendments in section 307 of the Criminal Procedure Code and also to introduce such alterations in the provisions of the Criminal Procedure Code as may be necessary in order to carry out certain recommendations made by them as regards special juries and the area from which jurors should be chosen. The amendments proposed in section 307 should, in my opinion, most decidedly be adopted. As far as the Courts in the mofussil are concerned I cannot see that any advantage could be expected from the employment of special juries. It also does not appear to me to be neccessary to make any alteration in section 319 of the Criminal Procedure Code. That section renders all males between the ages of 21 and 60 resident in any district liable to serve as jurors in that district. Section 320, however, gives the Local Government the power of exempting any persons from the liability to serve, and the Government of Madras have accordingly, by G. O. No. 2962-Judicial of the 17th November 1884, exempted all persons residing outside certain areas. It would therefore appear that, under the existing law, the Local Governments have the power which the Commission in paragraph 37 of their report consider should be conferred on them.

3. I am strongly of opinion that section 303 should be modified so as to give a Sessions Judge power either to require a special verdict on particular issues of fact or to demand from the foreman after the delivery of the verdict a statement of the grounds on which it is based. During the recent controversy as to trial by jury in India, one fact has been brought promin-

ently to notice, namely, that while Judges and others engaged in the administration of justice express themselves dissatisfied with a considerable number of the verdicts returned by juries, Sessions Judges make references to the High Court and the High Court interfere in a very small percentage of the cases tried. The reason in my opinion why so few references are made and so few verdicts set aside is that in the absence of any information as to the grounds on which a verdict is based, the Judges feel bound to assume that the jurors have considered the case in a rational and reasonable manner. Reference may be made to the case reported at I. L. R. 9, Calcutta 53, where the Sessions Judge put certain questions to the jury after they had returned their verdict. The answers given to these questions showed that the jury had arrived at certain somewhat foolish conclusions upon the evidence, but the learned Judges of the High Court refused to consider these answers on the ground that the Sessions Judge had no power to put the questions to the jury; and Mr. Justice Norris, having pointed out that there were rational grounds on which the jury might have disbelieved certain evidence, observed that he had a right to assume that the estimate of the evidence arrived at by the jury corresponded with the one formed by himself. The opinions given by the assessors in a large number of cases show that they have not taken a rational view of the evidence put before them and, if we had the power to ascertain the reasons which have led jurors to return their verdicts, we should often, I fear, find that they are not entitled to very great respect. In the only case in which I felt it possible to make a reference to the High Court under section 307 last year, the foreman of the jury having delivered the verdict volunteered a statement as to the grounds on which it was based. That statement was duly recorded by me, and as it showed that the jury had rejected evidence on most unreasonable grounds the verdict was set aside, and what would have been a palpable failure of justice was prevented. As observed by Mr. Justice Candy in the case reported at I.L.R. 15, Bombay 452 (at page 482) "a clear and concise idea as to the grounds of the verdict is of the greatest aid in the furtherance of justice. On the one hand, it may show the Sessions Judge that the verdict is not unreasonable; on the other, it may indicate on the part of the jury such an inability to appreciate the evidence that the Sessions Judge will have less hesitation in disagreeing with the verdict."

4. I regret the delay in submitting this letter. It is due to my absence in England, during the recess.

No. 249. From E. G. SEWELL, Esq., Sessions Judge, North Arcot, to the Chief Secretary to the Government of Madras, —No. 10, dated the 25th July 1893.

I have the honour to submit the report called for in G.O., dated 16th May 1893, No. 1022-Judicial.

2. The first proposed alteration of the law is contained in paragraph 20. The alteration is described as "slight" in paragraph 25; it might almost have been called microscopic. The motive of it is stated to be to make the law clearer. That being so, it seems not out of place to remark that to describe a man as being "clearly of opinion" is slipshod English. A man can only properly be described as "clearly of opinion" when he makes it clear to other people that he holds the opinion. It is evident that what is meant is that the Judge should be "decidedly of opinion that it is, etc, etc.," though even then the phrase is not as direct as it might be. It would, in my opinion, be better to go straight to the point and let the section run :—

If . . . the . . . . Judge disagrees with the verdict . . . . tried, and in case of an acquittal thinks the evidence sufficient to establish the guilt of the accused, or in case of a conviction thinks the evidence insufficient, etc., he shall submit the case to the High Court, etc.

3. No verdict of acquittal should be interfered with by the Judge, if he does not think the evidence sufficient to establish the guilt of the accused. If he does think it sufficient he cannot fail to be decided in the opinion that the acquittal of the accused is a failure of justice. The same remarks *mutatis mutandis* apply to a verdict of conviction.

4. But the charge is not likely—at all events, in this Presidency—to make any difference in the number of trials referred.

5. With regard to section 32, I think that the proposal to question the jurors would be likely to lead to great confusion and often considerable delay. The jury might have to retire and discuss the questions put to them in order to be able to say if they were unanimous in their answers. If they were unanimous in their verdict, but not in their answers, there might be considerable doubt as to what they did really mean, and a wide field would be opened for the misapplied ingenuity of vakils.

6. *Section 33.*—I am of opinion that it would be of advantage to everybody that the jury should be called upon to return a special verdict on issues framed by the Judge. It would, in case of a disagreement between the Judge and jury, narrow the difference to clear and defined questions and greatly diminish the Judge's labour in referring the verdict and that of the High Court in considering it.

7. As far as my experience goes, juries are apt to be prejudiced by facts brought out in the evidence of which they disapprove, and to give such facts a weight not at all warranted by their bearing on the question of the prisoner's guilt or innocence. Thus if one or two witnesses are manifestly speaking falsely, a jury is very apt to disbelieve true evidence of other witnesses for or against the same accused person. A verdict on special issues would indicate more distinctly the part of the evidence about which this had been done.

The greater difficulties spoken of in the report do not occur to me.

8. In this Presidency there is no distinction between special and common juries; there are only jurors and assessors. I think it might be a change well worth trying to have a separate list for jurors as distinguished from assessors. The duties of jurors are of much more importance than assessors, since the Judge is at liberty to, and very frequently does, disregard the opinion of the assessors. If, therefore, the most intelligent and experienced of the men on the joint list were set apart for the jury list, their verdicts would, in all probability seldom call for any revision.

9. It would be a great improvement if jurors and assessors too were paid their travelling expenses and batta, and the expense to Government would not be great. Probably R20,000 a year would cover the cost, and yet the relief would be much felt by the men who have to serve.

10. In this Presidency almost the only cases which are in fact tried by a jury are robberies and dacoities and thefts by old offenders. Unwillingness to convict on clear evidence is not common in such cases, so that the matter has not the importance here which it has been given in Bengal.

11. I suppose there is no one who would recommend the extension of the system in this Presidency.

ORDER THEREON. No. 250.

The following letter will be despatched to the Government of India.

2. Several of the Honourable the Judges of the High Court have expressed an opinion in favour of the proposal that a *verbatim* record of the Sessions Judge's charge to the jury should be required in every case. The Government recognizes the value of such a document, but there are numerous objections to any legislation which would require the Sessions Judge to record the whole of the charge in his own hand. The only practicable way of giving effect to the proposal would be to attach a competent shorthand writer to each Court and the Government doubts if there is a sufficient supply of such writers available. The Government would suggest that the High Court should make enquiries on the point and would be glad to be informed at an early date of the result.

3. The attention of all Collectors will be called to Mr. Mackenzie's remarks upon the compilation of lists of jurymen; it is hardly necessary to dwell upon the importance of exercising discrimination in the selection of men to perform the important duties of jurymen.

Extract from the Proceedings of the Government of Madras,—No. 727-A. Judicial, dated the 21st March 1894. No. 251.

Read again the following paper:—

G. O. Nos. 1747, 1748, Judicial, dated the 28th August 1893.

ABSTRACT—Directing, with remarks, that the Government of India be addressed on the various matters discussed in the report of the Commission appointed to consider and report on certain questions connected with trial by jury in Bengal.

Read also the following paper:—

From D. W. G. COWIE, Esq., Acting Registrar of the High Court of Judicature, Appellate Side, to the Chief Secretary to the Government of Madras, No. 542, dated the 21st February 1894.

Referring to G. O., dated 28th August 1893, No. 1747, Judicial, relating to the proposal to attach a competent short hand writer to each Sessions Court for the purpose of securing

a *verbatim* record of the Sessions Judge's charge to the jury in every case, I am directed to state that the Secretary to the Commissioner for the Uncovenanted Civil Service Examinations, who was requested to furnish statistics as to the number of persons who have passed the test in shorthand writing, has informed the High Court that since the date of the institution of "the Government technical examinations" and the examination in shorthand writing, 92 persons have passed the elementary, 29 the intermediate test and none the advanced test. The Honourable the Judges, not being satisfied with this report, called upon the several Sessions Judges to ascertain and report whether there were in their districts any efficient shorthand writers, either already in employment in the Judicial Department or willing to accept employment in the Sessions Courts, and to state the rate of pay they considered should be offered. The majority of the Sessions Judges have reported that no short hand writers are either on their establishments or available in their districts.

2. I am, however, to state that if it is made known that men who have passed the required test will get R30 or R40 a month in a District and Sessions Court as members of the *regular* establishments and will be eligible for promotion to higher offices, if possessed of the necessary qualifications, there will be no difficulty in securing the required number of competent men in a very short time. Until vacancies occur in posts worth R40, they might take up appointments on lower salaries and wait for the promised advancement when opportunity occurs. In the case of men duly qualified as shorthand writers, but not competent to hold an appointment by reason of not having passed the requisite special or other test, an application might be made to the Government for special exemption.

Order thereon by the Government of Madras.

The Government concurs with the views expressed in paragraph 2 of the High Court's letter, but prefers a system of personal allowances to that favoured by the Honourable the Judges.

2. The Government will accordingly be prepared to offer to one clerk in each Court of Session (not being an Agency Court)—

(1) a personal allowance of R30 *per mensem* if he has passed the intermediate or advanced examination in shorthand at the Government technical examinations;

(2) a personal allowance of R15 *per mensem* if he has passed the elementary examination in shorthand at the Government technical examinations, provided that, in this case, the Judge certifies that the clerk is able to record a charge to a jury with substantial accuracy.

It will, of course, be understood that the lower allowance will be given only in Courts where no person competent to draw the higher allowance is available, and every effort should be made to replace men drawing the lower rate by men eligible for the higher. The rates will also be liable to revision at any time at the discretion of Government.

3. The Commissioner for Government Examinations will furnish to all Sessions Judges at an early date a list of the persons who have passed the various grades of the Government technical examination in shorthand, and the Honourable the Judges will, no doubt, consider it advisable to direct District and Sessions Judges to offer the first vacancy which occurs in their Courts, or which they can make by means of a transfer, to a man who is qualified to draw one of the allowances now offered.

4. This Proceedings of Government will be published in the *Fort St. George Gazette* and all District Gazettes and will, further, be laid upon the Editors' Table.

No. 252. Endorsement by the Chief Secretary to the Government of Madras, Judicial Department,—No. 727 A., dated 21st March 1894.

Copy to the Government of India, Home Department, with reference to paragraph 8 of Judicial letter, dated 28th August 1893, No. 1748.

No. 253. From G. C. WHITWORTH, Esq., Acting Secretary to the Government of Bombay, Judicial Department, to the Secretary to the Government of India, Home Department,—No. 5946, dated the 23rd September 1893.

I am directed to acknowledge receipt of your letter No. 546, dated 6th May 1893, forwarding, with reference to the correspondence ending with Home Department letter No. 257, dated 4th March 1893, on the working of the system of trial by jury in Sessions Courts in Bombay, copies of certain papers relative to the Jury Commission, and inviting special reference

to their report submitted with their Secretary's letter, dated 24th March 1893, and requesting that this Government will report their opinion and that of the High Court on certain of the proposals for amending the Criminal Procedure Code which are contained in the Commission's Report.

Mr. G. M. Macpherson, I.C.S., Judicial Commissioner in Sind.
The Honourable Mr. W. H. Crowe, I.C.S., Sessions Judge, Poona.
Mr. J. W. Walker, I.C.S., Sessions Judge, Satara.
Mr. S. Hammick, I.C.S., Sessions Judge, Ahmednagar.

2. In reply I am to forward, for the information of the Government of India, copies of the opinions received from the High Court and the officers noted in the margin, who were consulted by this Government on the points raised.

3. The points on which the opinion of this Government is more particularly required appear to be briefly:—

(i) As to the amendment of section 303 of the Criminal Procedure Code so as to enable the Judge to require from a jury a verdict on particular issues of fact;

(ii) As to the proposal to amend section 307 by the substitution in the first paragraph of the words "and is clearly of opinion that it is" for "so completely that he considers it," and by the insertion in the last paragraph between the words "High Court" and "may" of the following words, namely, "shall consider the entire evidence, giving due weight to the verdict of the jury and to the opinion of the Sessions Judge and of the dissentient jurors, if any, and;"

(iii) As to the advisability of amending section 269, Criminal Procedure Code, so as to require that action under that section should only be taken by Local Governments with the previous sanction of the Governor General in Council; and

(iv) What modification, if any, are needed in the jury system in this Presidency.

4. With regard to the first point, I am to state that this Government agree with the Government of India in considering an amendment of section 303, in the direction indicated, desirable. It will be observed that, whereas the majority of the Judges of the High Court do not consider the amendment called for, the majority of the Sessions Judges consulted approve of it, and I am to state that the Governor in Council concurs with the latter. The suggestion originated with an expression of opinion by the Honourable Messrs. Birdwood, Telang and Candy (JJ.), and for the reasons which are set forth by the Government of India in paragraph 15 of their Despatch No. 32, dated 21st December 1892, to the Secretary of State, it has the entire approval of the Governor in Council. I am, however to invite a reference to Mr. Hammick's letter submitting his opinion on this point and to observe that the wide difference between requiring special verdicts on particular issues of fact and requiring reasons for a decision does not appear to have been sufficiently recognized. Juries should certainly not be cross-examined but if as suggested by Mr. Hammick the presiding Judge were required before asking for a special verdict on a particular issue of fact to state carefully in writing the points for determination framing the essential issues with strict regard to the terms of the definition of the offence with which the accused is charged, there seems to the Governor in Council to be no reason to fear, as the Honourable Mr. Crowe does, that the proposed alteration of the law would in practice confuse and perplex jurors. At the same time the Governor in Council is of opinion that the amendment should provide that in all cases a general verdict on the whole case should be given, and that only thereafter, if it should appear necessary, the Session Judge should be empowered as proposed.

5. On the second point though there appears to be nothing in section 307 as it stands, to prevent the High Court from generally doing complete justice in any case referred thereunder or to prevent Judges from freely referring such cases, yet since it is recognized that this view has not always been held, the Governor in Council has no objection to the proposed alterations in the phraseology.

6. With reference to the proposed amendment of section 269 of the Code of Criminal Procedure, I am to state that the Governor in Council considers that there is no special advantage to be gained by throwing the responsibility of extending or limiting the classes of offences which in particular districts may be tried by jury on the Government of India.

7. Proceeding now to the modifications, if any, which this Government would propose in the jury system, I am to invite a reference to paragraph 2 of Mr. Lee-Warner's letter No. 614, dated 27th January last, in which the suggestions of the various officers consulted were summarized, and I am now to state the conclusions at which this Government have arrived. The subject requires consideration, 1st, in regard to those districts to which trial by jury has been already extended, and, 2ndly, in regard to its extension to other districts.

8. It is perhaps a question whether it was altogether wise, in introducing a system which is after all exotic, to commence by applying it to murder cases in districts where, as in Ahmedabad and Surat, the whole thought and feeling of the people are least favourable to its working when the life of the accused is at stake. But on the other hand, trial by jury being *ex-hypothesi* the best, it may fairly be argued that such cases are just those in which it is most important to allow it; and, however that may be, there are obvious and weighty practical objections to withdrawing, where it has once been granted, a privilege which has come to have a high political value. It appears to His Excellency in Council that it will be better to do what is possible to minimize such evils as arise from the exercise of the privilege than to withdraw murder cases from the cognizance of juries, and that much may be done in this direction by a proper use of the provisions of sections 277 to 279 of the Criminal Procedure Code.

The Governor in Council is strongly of opinion that it is wrong to permit men to serve on juries in murder cases to whom the taking of life is repugnant. In every district, therefore, in which murder cases are tried by jury, it should be the duty of the prosecution to challenge every juror who belongs to a class having a religious objection to the death sentence. An objection so taken would apparently be allowed by a Court under section 278 (*h*) of the Code, but since a decision under that clause depends on the opinion of the Court as to whether the religious objection held by the juror "renders him improper as a juror" in the particular case, it may be necessary to amend the clause so as to meet the cases now contemplated in such a way that the discretion in allowing or disallowing the objection shall not rest with the Court. In accordance with these views the Governor in Council is not disposed to accede to the recommendation of the Judicial Commissioner in Sind to withdraw murder cases from the list of cases triable by jury in Karachi or to withdraw such cases from any other district in which at present they are so triable.

9. The other important modification in the jury system, in those districts to which it has been extended, which was recommended by the High Court when previously consulted by Government, was, as reported in paragraph 2 of Mr. Lee-Warner's letter No. 614 of 27th January 1893, that from the three districts of the Presidency Proper, namely, Surat, Thana and Belgaum, where they now possess it, the right of the trial of offences under Chapters VI and VII of the Indian Penal Code should be withdrawn. I am to state that the practical objections to the withdrawal of murder cases do not, in the opinion of this Government, exist to the same extent in the case of offences under these two chapters; and that, since there is certainly no reason why these offences should be triable by jury in the three districts named, and not in Poona and Ahmedabad, and since it is of more importance to withdraw them from Thana, Belgaum and Surat than to extend them to Poona and Ahmedabad, the Governor in Council considers that the withdrawal of these offences should, as recommended by the High Court, be sanctioned.

10. It remains to discuss the action which it is proposed to take in regard to those districts in which, at present, trial is not by jury. As remarked in Mr. Lee-Warner's letter of January last, the only district to which the officers consulted concurred in considering the extension of the system advisable was Sholapur, and instructions were then (paragraph 4) invited as to whether further directions from the Government of India should be awaited before the consideration of the policy of extending the system to that district should be undertaken.

11. With reference generally to the lines on which in future such extensions should be granted, I am to state that, as at present advised, the Governor in Council is disposed to approve of a classification such as is suggested in the Minute of the Honourable Mr. Justice Fulton, dated 3rd January 1893, a copy of which accompanied this Government letter No. 614, dated 27th January 1893; and I am to add that, in order that the inconsistencies in the matter of the classes of offences which are now triable by jury in the five districts of the Presidency Proper may disappear, the Governor in Council considers it desirable that these districts should be assimilated to one another according to the classification alluded to above. The Governor in Council proposes, therefore, when dealing with Sholapur, to proceed in accordance with the views of the Honourable Mr. Justice Fulton and to bring it into line with the districts of the first or second class according as it may seem desirable after again consulting the local officers.

12. I am, in conclusion, to invite the attention of the Government of India to the suggestion contained in Mr. Walker's letter (herewith forwarded) that the opinion of a bare majority should not be accepted as a verdict, the essence of the jury system being that their verdict must be practically unanimous. I am to remark that the suggestion seems well worthy of consideration when dealing with the subject of trial by jury.

From C. H. JOPP, Esq., Registrar, High Court, Appellate Side, Bombay, to the Secretary to the Government of Bombay, Judicial Department,—No. 1498, dated the 18th July 1893. No. 254.

I am directed to acknowledge the receipt of your letter No. 3357 of the 3rd ultimo, forwarding copy of a letter No. 516, dated 6th May 1893, with accompaniments, from the Government of India, including the Report of the Commission appointed to consider and report on certain questions connected with the system of trial by jury in Bengal, and requesting that Government may be favoured with the opinion of the Honourable the Chief Justice and Judges on the various proposals for amending the Criminal Procedure Code dealt with in the Report of the Commission and the Government of India's letter.

2. In reply I am directed to forward a copy of a minute recorded by the Honourable the Chief Justice, concurred in by the Honourable Mr. Justice Bayley, the Honourable Mr. Justice Parsons, the Honourable Mr. Justice Fulton and the Honourable Mr. Justice Starling, and also copy of a minute recorded on the subject by the Honourable Mr. Justice Candy. The Honourable Mr. Justice Telang has not recorded a minute on the papers.

Minutes recorded by the Honourable the Chief Justice and Judges on the proposals for the amendment of certain sections of the Criminal Procedure Code relating to trial by jury. No. 255.

Minute by the Honourable the Chief Justice.

There is no objection to the proposed amendment to section 307 of the Criminal Procedure Code, but I fail to see that it can be of any practical use.

The question will still be, as it has always been, what is the "due weight" attaching to the verdict of the jury and opinion of the Sessions Judge, for I cannot suppose that any Judge ignored them altogether.

As to the proposed amendment to empower the Sessions Judge to require a special verdict on particular issues of fact, there is no reason why it should be exercised in one case rather than another, and the result will be that jurors will virtually be called upon to give their reasons, and will thus differ but little, if at all, from assessors. I agree with the Commission that "such a procedure would be liable to create greater evils than it would remedy."

The 22nd June 1893. C. SARGENT.

I concur.

The 3rd July 1893. L. H. BAYLEY.

Concurred.

The 7th July 1893. H. J. PARSONS.

I concur. E. M. H. FULTON.

I concur.

The 5th July 1893. M. H. STARLING.

Minute by the Honourable Mr. Justice Candy. No. 256.

I see no objection to the proposed amendments of the Criminal Procedure Code, sections 307, 303 and 269.

With regard to section 307, I need not repeat my remarks in my minute of 28th June 1890, in which I pointed out that, if a Session Judge thinks it necessary for the ends of justice, he *must* refer the case to the High Court.

With regard to section 303, I would refer to my remarks in my minute of 28th June 1890, with which Mr. Justice Telang concurred in his minute of 30th June 1890, and which were apparently approved of by Mr. Justice Birdwood in his minute of 9th August 1890.

I cannot see the greater evils which, it is said, such an amendment would create. It is not intended that jurors should be called on to give the reasons for their verdict, but simply a special verdict on specific issues framed by the Sessions Judge.

The 14th July 1893. E. T. CANDY.

No. 257. From G. M. MACPHERSON, Esq., Judicial Commissioner in Sind, to the Secretary to the Government of Bombay, Judicial Department,—No. 5, dated the 24th June 1893.

In forwarding the report called for in Government Resolution No. 3356 of the 3rd current, I have the honour to remark that in my opinion the chief changes called for as to the jury system are as to sections 307 and 303 of the Criminal Procedure Code. As it stands, section 307 empowers a Sessions Judge to submit to the High Court a case in which he so differs from the verdict of the jury as to consider it necessary so to submit the case. It is left entirely to his own discretion whether to do so or not. If he thinks it necessary to submit it, he submits it; if he does not think it necessary to do so, he abstains from doing so. It is not declared to be his duty to do so in cases in which he may differ greatly from the verdict. The section should, I think, be amended so as to make it run as follows:—

> "If in any such case the Sessions Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which the accused has been tried, and considers that a failure of justice will result from such verdict if acted on, he shall submit the case to the High Court, recording the grounds," etc.

2. This makes allowance for cases such as any in which the Sessions Judge disagrees with the verdict and would himself give a different one, but in which he feels the verdict to be such as reasonable men might reasonably arrive at on the evidence and whole circumstances of the case. It makes it his duty to submit no case in which the Sessions Judge does not think a clear error has occurred, likely to cause a failure of justice. At the same time, it makes it compulsory to report every case in which it is thought the jury have clearly and seriously erred so as to make such a failure probable.

3. I may here refer to two cases which have recently occurred in Karachi, in both of which the enquiry as to important matters had been very insufficient. In one case a jury convicted the accused of murder, and the case came before me for confirmation of the sentence. Finding that the enquiry had been very inadequate, I annulled the conviction and ordered a new trial under Section 376, and on the re-trial the jury, with the approval of the Acting Sessions Judge, acquitted the accused. The other case was taken up by me as a revisional case, and being dissatisfied with the inadequate enquiry and the erroneous charge and verdict, I ordered a new trial, in which the second jury gave the same verdict as had been given in the first trial—a verdict which the Acting Sessions Judge refused to accept, whereupon he referred the case under section 307. This shows that Judges may differ as much as juries.

4. To enable the Sessions Judge to form a proper opinion of the jury's verdict in such cases, it is, I think, advisable that he should be empowered and required to learn the jury's opinion as to the different matters involved in the case, as showing accused's innocence or guilt. In paragraph 3 of my letter No. 8 Confidential of the 17th December last, I stated that I did not think that jurors should be asked for their reasons, and I said that "it would be unfair to expect from them the power of drawing and explaining the fine distinctions which admittedly at times exist, between" murder and culpable homicide not amounting to murder. Moreover, reasons weighing much with one juror might weigh little with another. Often verdicts are a compromise, and even when they are not so, jurors may come to the common conclusion from very different reasons. To expect reasons from them would disgust them, and would often lead to much confusion and unpleasantness; but as to the main facts they should be agreed,—for instance, as to whether stolen property was found with a man and whether he accounted satisfactorily for his possession of it. This would necessitate a slight change in section 303.

5. I think it should also be provided that, on hearing their decision as to the facts proved or not proved (even if differing from the general verdict already given by the jury), the Sessions Judge might give judgment according to the proper legal inferences drawn from their decision as to particular facts, leaving it to accused to appeal, if he wished to do so, on the ground that the facts found proved did not warrant the decision. This would meet, *e. g.*,

the case of jurors who insist, as many assessors do, that there must be an eye-witness of guilt. It would cover the case given in paragraph 3 of the letter No. 546 from the Government of India. If the Judge approved of these minor findings, there would of course be no need of referring such a case under section 307. The opinions as to the facts, if approved of, would take the place of the general verdict and would be acted on. By section 299 of the Code the jury are to decide as to matters of fact, and are bound to give their decision as to conclusions to be drawn therefrom according to the Judge's direction, whether they agree with it or not. What I propose is simply to let the Judge in such cases draw that conclusion which the jury are bound by law to draw according to his directions, but which they refuse so to draw. I do not think there would be any hardship in the above, which would give full influence to the opinion of the jury in their own sphere, namely, that of deciding on the facts, and would simply leave the Judge to apply the law to the facts so found. It might at times be difficult for him to tell which of two sections the offence should come under, and he would have to act on the principle of convicting of the less serious offence laid down for similarly doubtful casses. If he disagreed with the decisions as to matters of fact, he would of course be able to refer the case for the orders of the High Court.

6. High Courts have at times unduly refused to interfere in cases reported under section 307, but it is found that of recent years there has been less inclination to refuse to interfere with the verdicts of jurors. The wording of the last paragraph of section 307 is clear and confers full powers of interference. I do not see that it is necessary to change that part of the section. But it is notorious that Judges arise from time to time with strong opinions on one side or the other, and it would be unreasonable to assume that none will hereafter preside in High Courts who have exaggerated views as to the weight to be attached to the verdict of a jury. It might, in fact, be used as an argument for non-interference hereafter that no change had been introduced, even though it was known there had been Judges with strong opinions against interference. I think therefore that, though the law at present meets all requirements, it would be well to introduce the words recommended by the Commission in the end of paragraph 24 of their Report as to considering the entire evidence and giving due weight to the opinions of the jurors and Sessions Judge.

7. I do not think that so long as trial by jury is maintained, an appeal can be allowed as to matters of fact in ordinary cases. In murder cases in which sentence of death is passed this is virtually allowed, as the High Court has to satisfy itself about the propriety of the conviction as well as about the sentence. If an appeal was allowed in other cases, jurors would be only a higher class of assessors. I myself do not believe in trial by jury, but so long as we maintain it, we must do so in reality and not merely in name. The proposal to have special jurors seems objectionable. It would be difficult to find a sufficient number of special jurors, and there would be an idea that their verdicts were of a different quality from those of ordinary jurors. I would also point out that a case of an ordinary offence may be as full of evidence requiring careful weighing as a case of a much more serious nature.

8. There remains the question of the offences which should be tried by juries. I have in letters No. 1847 and No. 8 Confidential of the 26th August 1890, and the 17th December 1892, respectively, given reasons why, in my opinion, cases in which persons are accused of having caused death should not be tried by juries. Apart from alleged unwillingness to convict an accused person of murder owing to caste prejudices, I find that there is a tendency even among Sessions Judges to convict of culpable homicide persons whose cases seem clearly to come under the definition of 'murder.' Exceptions are almost strained at times to let this be done. If Sessions Judges do this, what may not be expected from jurors who have not the technical knowledge enabling them to distinguish between the offences? Cases coming under Chapters VI and VII of the Penal Code clearly should not be tried by jurors, who may be influenced by very biassed motives in disposing of such cases. I would also exempt cases of rioting, *e. g.*, cases under Chapter VIII. The report of the Commission says Sessions Judges oftener err in disposing of such cases, than which "there is no class of cases in which it is more difficult to ascertain the truth" (paragraph 21 of the Report). I should have thought that these are reasons for continuing the trial with assessors, as it must be still more difficult for a jury to bear in mind the evidence affecting every accused person. The recommendation to try the rioters "in small batches" would greatly add to the work of courts which had many such cases, and would itself lead to practical injustices, as there are clear advantages from trying all the accused together. I think cases of theft, etc., in which a person is committed for trial, not because of the gravity of his offence, but because of his being an habitual offender, should not occupy the time of jurors. They should be used for trying cases of importance in themselves. In most places, but not in Karachi, I would remove offences of rape and unnatural offences from those to be tried by

jury. The Commission recommends the exclusion of cases relating to marriage (paragraph 29), and I think this right. The customs of jurors as to divorce, etc., may be quite different from those of the accused, and the jurors would tend to think their rules should apply generally. I have found that respectable Natives as assessors looked on unnatural offences as a kind of almost legitimate amusement, and I would usually exempt such offences from the list of those triable by jurors.

9. The above seem all the matters referred for report, save the enquiry as to section 269, which it is proposed to amend so as to make action under it depend on the prior sanction of the Government of India. The Government responsible for notifications under that section should necessarily be that which has local knowledge of the circumstances of the districts to be affected by the proposed changes. Whether a district is fit for trial by jury can only be told by those with local knowledge. A particular member of the Governor General's Council might know the general circumstances of a particular district, but he might not know even it well enough to be able to offer a decided opinion as to whether it was adapted for the introduction of trial by jury, so that for some purposes I do not think such sanction should be required. But it seems to me that the Government of India might issue rules from time to time, *e. g.*, as to the classes of offences usually to be tried by juries, and the notifications should be subject to these rules. The section might be amended so as to commence with the words "subject to any rules issued from time to time by the Governor General in Council." That would not require sanction of the application of the system of jury trial to particular places, but would secure that there was some uniformity as to the classes of offences triable by juries.

No. 258. From W. H. Crowe, Esq., Sessions Judge, Poona, to the Secretary to the Government of Bombay, Judicial Department,—No. 316, dated 4th July 1893.

I have the honour to submit the following observations on the proposals for the amendment of certain sections of the Criminal Procedure Code relating to trial by jury dealt with in the Report of the Jury Commission and the letter of the Government of India received with Government Resolution No. 3356 P., dated 3rd June 1893.

2. (Paragraph 24.) The first proposal contained in the Report relates to a modification of section 307 of the Criminal Procedure Code. It is recommended that in the 1st paragraph the words "and is clearly of opinion that it is" should be substituted for the words "so completely that he considers it."

I fail to see any advantage in the new form of verbiage suggested, or that the duties of the Sessions Judge are more clearly defined thereby. The modification suggested in the last paragraph appears to me reasonable, and certainly defines more precisely the procedure to be adopted by the High Court in considering a reference under this section.

3. (Paragraph 28.) With reference to the classification of offences triable by jury, I am strongly of opinion that the classification by chapters of the Penal Code is preferable to that by degree of punishment. It is very generally admitted that even if the object of introducing the jury system into India was to complete the political education of the people and to induce them to take a part in the work of self-government and the administration of justice it would have been wiser to provide in the first outset that they should try their prentice hand on the trial of offences of a trivial character and not of grave and heinous offences where a failure of justice might be attended by calamitous results.

4. (Paragraph 32.) I am not in favour of any alteration of section 303 of the Code of Criminal Procedure in the direction suggested. My experience is that even when simple questions are put to jurors for the purpose of ascertaining what their verdict is, they get hopelessly muddled and are unable to find intelligent and logical expression of the conclusion they have arrived at. There is always a difficulty in getting them to act independently. The most influential person of their number is usually chosen foreman and he carries great weight with the rest. The result would generally be that each juror would repeat the opinion given by the foreman from inability or unwillingness to enunciate a distinct expression of his own views, whether they really had differed or not.

5. (Paragraph 37.) There seems no object in extending the area of selection of jurors. The object of the Judge is always to make the duty as little irksome as possible, and the farther you proceed from a large commercial centre the less likelihood there is of finding the material required.

6. With regard to the modifications which are desirable in the arrangements now obtaining in Bombay, I am of opinion that all offences under Chapters VIII, XI, XII, XIII, XIV, XVI, XVII, XVIII, XX, abetments of and attempts to commit such offences, irrespective of the amount of punishment fixed by the law, should be made triable by jury. At present the practice of charging an accused at the same time with several offences of which some are and some are not triable by jury adds to the labour of the Court and leads to some confusion.

7. There can be no doubt that in Bombay the system has been extended to areas to which it is unsuitable, and whatever measure of success has attended its introduction in certain districts is not such as to justify its extension to any new districts.

From J. W. WALKER, Esq., Sessions Judge, Satara, to the Secretary to the Government of Bombay, Judicial Department,—No. 2 dated 22nd June 1893.

With reference to Government Resolution No. 3356 of the 3rd instant, Judicial Department, I have the honour to state that I think the amendment of section 307, Criminal Procedure Code, proposed by the Commission, should be adopted. No. 259.

2. I agree with the Government of India that a Sessions Judge should be empowered to require a special verdict on particular issues of facts. As a further illustration, besides that given by the Government of India, I may state that in a case recently tried in this Court with three assessors, the assessors were of opinion that the charge of murder was not proved, but in giving their reasons they stated that the accused had caused hurt to the deceased. On the evidence it was quite clear that if the accused caused hurt at all they were guilty of murder, and the accused were, in fact, convicted of murder and the conviction was upheld by the High Court. Here if the three assessors had been sitting as a jury, the Court would naturally have concluded that the jury disbelieved the whole evidence, whereas the evidence was believed, but the necessary conclusion that the offence amounted to that of murder was not drawn. It often happens that it is difficult to determine whether a particular act constitutes the causing of hurt, culpable homicide, or murder, and the only satisfactory mode is to ascertain what precise facts are held to be proved.

3. The point which I wish to urge is that it is a great mistake to allow a jury to decide by a majority of one.

The very essence of the jury system is that the decision should be that of the whole body or of a substantial majority. It is generally safe to trust the collective wisdom of a number of persons, where the opinion of one person is worth nothing. As the law at present stands, it frequently happens that a jury is divided by 3 to 2. What advantage is there in accepting, as the finding of the jury, the opinion of one person? I have had a murder case in which 2 of the jury were for convicting and 3 for acquitting; I entirely agreed with the minority, but owing to the opinion of one juryman the case had to be referred to the High Court, which had not had the benefit of hearing the evidence. Even if the High Courts are required to decide cases referred to them by a Sessions Judge after considering the entire evidence, it is a great mistake, I think, to enable one jury-man to compel the reference to be made.

The report of the Commission shows that one of the great advantages of the jury system is the education of the people. This object would be greatly assisted by requiring juries to decide unanimously or by a substantial majority. What frequently happens now is that a jury makes no real attempt to discuss and consider the various considerations in a case. If the law provided that the verdict must be unanimous or by a three-fourths majority there would be much more discussion. There is no inducement whatever, as the law stands, for the members of the jury to make a real attempt to come to an agreement. Each forms his own opinion and is ready to give it at once, as the law accepts the verdict of a majority.

In an experience in the hearing of criminal cases extending over 20 years in various parts of the Presidency, I have found that jurors and assessors generally wish to give an honest opinion on the merits, but are quite incapable of fully considering the various facts and inferences. It seldom happens that assessors ask for time to think over the points and consult with each other before giving their opinion. Debate and discussion on ordinary subjects of life can hardly be said to exist in this country, and hence, I think, it is that assessors so often give such ridiculous reasons, based entirely on general considerations to the exclusion of the evidence in the case, as I have heard; as, for instance, that no one would commit a serious offence before witnesses, or that no sufficient motive appears. Anything, therefore, to encourage a close examination of the facts and inferences is most desirable.

Next, the existing law is, I think, against the due administration of justice. If juries were required to decide unanimously or by a three-fourths majority, there would be fewer failures of justice. References to a High Court would, I think, be much fewer if verdicts by a bare majority were not accepted.

To ensure a jury making a real attempt to come to a sensible conclusion, the law should provide, I think, that a verdict to be accepted must be unanimous or by 4 to 5, 5 to 7, or 6 to 9, in juries of 5, 7 or 9. As the jury list is too small to allow of re-trials, the law should provide that in other cases the Judge may record the opinion of each juryman as if the case had been tried with assessors, and then proceed to pass judgment. A jury may already in

some cases be treated as assessors (section 269), and hence there is no objection on the ground of novelty.

The only objection I can think of is that where some members of a jury are against the opinion of the majority, they may be tempted to suppress the fact so that there should be a decision as by a jury and that the jury should not be set aside and treated as assessors. But as the power to refer to the High Court and a hearing by that Court on the evidence would remain, no harm would arise.

4. To put it shortly, there is no possible advantage in allowing a jury to decide by a bare majority, while many advantages would be gained by altering the law so that the verdict of the jury should mean what it is popularly supposed to imply and what it is in the Presidency towns.

5. As the law stands, if there is a bare majority for acquitting while the Judge entirely concurs with the minority of 2 out of 5, the Judge must refer the case to the High Court, and then there is a *first* decision by a Court which did not hear the evidence. If the High Court convicts, there may be an outcry that "the verdict of a jury" was set aside, the public not bearing in mind that the so-called verdict was a verdict by 3 to 2. On the amendment proposed by me, if the jury were 3 to 2, the Judge would record the opinion of each juryman as an assessor and would then pass judgment, and an appeal would lie to the High Court. If 3 were for acquitting, while 2 were for convicting, and the Judge agreed with the latter, there would be the advantage of a decision by the Court instead of a reference. Why one juryman should have it in his power to compel the reference, I fail to see. It is only fair, I think, to provide that, if there is to be a reference, it shall only be required when there is a verdict in the proper sense—unanimous or by a substantial majority. That, as things stand in the mofussil, the law must provide for a reference when the Judge differs entirely from a jury, even if unanimous, is generally conceded and is recognised in the law as it stands. Hence, I think, the law should provide for a reference only when the Judge differs from a unanimous jury or from a jury giving a verdict by 4 to 5, in juries composed of 5 members as usual in this Presidency. In all other cases, the Judge should treat the jury as assessors and give judgment himself, on the ground that the jury could not agree and it is not possible to order a re-trial owing to the jury list being so small in the mofussil.

No. 260. From S. Hammick, Esq., Sessions Judge, Ahmednagar, to the Secretary to the Government of Bombay, Judicial Department,—No. 2, dated the 8th June 1893.

I have the honour, in obedience to Government Resolution No. 3356 in the Judicial Department, dated the 3rd instant, to submit my opinion on various proposals to amend certain sections of the Criminal Procedure Code relating to trial by jury dealt with in the Report of the Jury Commission and the letter of the Government of India.

2. The points involving a change in the Criminal Procedure Code with which the Jury Commission deal are—

(*a*) The amendment of section 207, Criminal Procedure Code.
(*b*) The amendment of section 303, Criminal Procedure Code.
(*c*) Special verdicts on issues framed by the Judge.
(*d*) Special juries.
(*e*) Number of jurors, proposal to reduce from 5 to 3.
(*f*) Age of jurors.
(*g*) Area of selection of jurors.
(*h*) Revision of jury list.
(*i*) Accommodation of jurors.
(*k*) Remuneration of jurors.
(*l*) Seclusion of jurors.
(*m*) Right of appeal.
(*n*) Heads of charge to jury.

3. The Government of India, in their letter No. 32 of 21st December 1892, recommend the amendment of section 303 so as to empower the Judge to require from the jury special verdicts on particular issues of fact, but think that in other respects no alteration of the law seems to be required.

4. I concur in the recommendation to amend section 303 so as to empower the Judge to require special verdicts on particular issues of fact. But it should be understood that this is not a provision to permit the Judge to cross-examine the jury as to their reasons after the verdict has been delivered. The special issues should be clearly stated in writing before the jury is called upon to decide, and should form a part of the record of the case. I think that the system of requiring special verdicts is likely to be of use not only to the High Court, but for the purpose of keeping the jury from going astray into irrelevant questions.

5. As regards the other points dealt with by the Jury Commission, I am inclined to support the proposed amendment (*a*) of section 307. The section as it now stands seems to have been intended to check Sessions Judges except in gross cases of failure of justice, and the High Courts also seem in the exercise of their powers to have taken a similar view. My impression is that Sessions Judges have no reluctance to refer cases, but that they are considerably influenced by the principles which guide the High Court in disposing of them. I think that it is desirable that the law should express in clear terms, admitting of no doubt, what are the duties of the Sessions Judge and the High Court in dealing with such cases.

6. Special juries (*d*). I think that outside the Presidency towns special juries could not be obtained, and, if they could, would not be an advantage.

7. Number of jurors (*e*). I cannot advise any reduction in the number of jurors. In a jury of five members one member often has an excessive and mischievous influence, and in a jury of three members it would be worse.

8. Age of jurors (*f*). There is no reason why the age of jurors should be altered.

9. Area of selection (*g*) should be determined as at present by the Local Government.

10. Revision of jury lists (*h*) requires no alteration in the law.

11. Accommodation of jurors (*i*). Suitable accommodation should, no doubt, be provided where it is available, but this need not be inserted in the Criminal Procedure Code.

12. Remuneration of jurors (*k*) is, in my opinion, desirable, as also is that of assessors, provided the means are forthcoming.

13. Seclusion of jurors (*l*) is generally impracticable in this country.

14. Right of appeal (*m*). The power of reference under section 307 will in many cases provide sufficient protection against unjust verdicts. But, if my memory does not deceive me, juries in certain classes of cases, *e. g.*, when a Bhil is charged with robbery, are prone to jump hastily to the conclusion of guilt, and I think that a right of appeal on the facts should be allowed.

15. Heads of charges to jury (*n*). I think that no change of the law in respect to the charge to the jury is necessary. My experience is that juries pay little or no regard to the Judge's charge, and a *verbatim* record would have no influence on the verdict.

From H. J. S. COTTON, Esq., C. S. I., Chief Secretary to the Government of Bengal, to the Secretary to the Government of India, Home Department,—No. 1350 J., dated the 5th March 1894. No. 261.

I am directed to acknowledge the receipt of your letter No. 547, dated the 6th May 1893, forwarding a copy of certain papers on the system of trial by jury in Sessions Courts in Bengal, and asking for an expression of the opinion of the Lieutenant-Governor and of selected officers on the various proposals for amending the Code of Criminal Procedure, dealt with in the Report of the Jury Commission.

2. In reply I am to state, for the information of the Government of India, that the officers noted in the margin were consulted by this Government on the above subject, and also in regard to other suggestions made in the Report of the Commission. All the officers have replied, with the exception of the Commissioner of Chota Nagpur. The Lieutenant-Governor having carefully considered the replies desires me to communicate the conclusions at which he has arrived for the consideration and orders of the Government of India.

The Commissioners of Divisions.
The Sessions Judges.
The Judicial Commissioner of Chota Nagpur.
The Legal Remembrancer.

3. The Jury Commission considered in paragraph 32 of their Report whether the terms of section 303 of the Criminal Procedure Code should be amended so as to enable a Sessions Judge to obtain more clearly the opinions of the jury on parts of the evidence, so as to learn and place on record the grounds upon which their verdict was arrived at, and also whether questions should be put to the jurors after verdict had been delivered, and came to the conclusion that no alteration in the law was necessary. This opinion has apparently been accepted by the Government of India. In paragraph 33 the Commission considered whether it was practicable to enable the Judge to direct the jury to return a special verdict on issues framed by him, but reluctantly decided that such a procedure would be liable to create greater evils than it would remedy. On this point the Government of India have expressed the opinion that they are disposed to adhere to the view that section 303 of the Code should be so amended as to empower the Sessions

Mr. P. Nolan, Commissioner of Rajshahi.
" J. Whitmore, Sessions Judge, Birbhum.
" C. P. Caspersz, Sessions Judge, Chittagong.
" H. Cox, Sessions Judge. Tirhut.
" A. W. Mackie, Sessions Judge, Rangpur.
" H. Holmwood, Sessions Judge, Bhagalpur.
" C. M. W. Brett, Sessions Judge, Dacca.
" H. P. Peterson, Sessions Judge, Burdwan.
" J. H. Bernard, Magistrate, Nadia.
" F. A. Slack, Magistrate, Chittagong.
Kumar Gopendro Krishna Deb, Magistrate, Pubna.
Babu Chundra Narain Singh, Personal Assistant, Commissioner of Bhagalpur.
Members of the Jessore Bar.
Ditto Krishnagar Bar.
Government Pleader, Nadia.

Judge to require a special verdict on particular issues of fact. The preponderance of opinion among officers consulted by this Government is undoubtedly in favour of the proposal of the Government of India, but there is an influential minority against it, consisting of the authorities enumerated in the margin. The principal objection taken is the risk of the Judge's enquiries degenerating into a cross-examination of the Jury.

After full consideration the Lieutenant-Governor is disposed to agree with the Commission that there is no absolute necessity for a change, as, under the present law, a Judge can, and a good Judge does, put the issues before the jury, so that they should be obliged to give a verdict on each point; but since all Judges do not do this, Sir Charles Elliott would prefer to see such a change made in the wording of section 303 as shall show that the procedure should always be as above described, the Judge laying down each issue and calling on the jury for a special verdict on each.

4. In paragraphs 24 to 26 of their Report, the Jury Commission recommend the amendment of section 307 of the Criminal Procedure Code by the substitution of the words "and is clearly of opinion that it is" for the words "so completely that he considers it" in the first paragraph of that section; and by the insertion in the third paragraph of the words "shall consider the entire evidence, giving due weight to the verdict of the jury and to the opinion of the Sessions Judge, and of the dissentient jurors, if any, and" etc., etc., continuing in the terms of that section. On this point the following officers consulted would adopt the Commission's wording in both paragraphs :—

Mr. H. Luttman-Johnson	Commissioner, Dacca.
" P. Nolan	Ditto, Rajshahi.
" H. F. Mathews	Sessions Judge, Purnea.
" H. Cox	Ditto, Tirhut.
" J. Pratt	Ditto, Midnapur.
" G. G. Dey	Ditto. Shahabad.
" S. J. Douglas	Ditto, Tippera.
" F. W. R. Cowley	Judicial Commissioner, Chota Nagpur.
" B. Dé	Magistrate, Khulna.
" J. H. Barnard	Ditto, Nadia.
" D. B. Allen	Ditto, Midnapur.
" J. H. E. Garrett	Ditto, Shahabad.
Government Pleader	Khulna.

In regard to the first paragraph of the section, an opinion is expressed by a large contingent of officers that it would be well to return to the language used in the Code of 1872, substituting for the words "so completely that he considers it necessary for the ends of justice to submit the case to the High Court, he shall submit the case accordingly" the words "and considers it necessary for the ends of justice that he should do so, he shall not record judgment on that verdict, but shall submit the case to the High Court." A small number of officers—

Mr. R. H. Anderson	Sessions Judge, Murshidabad.
" B. C. Seal	Ditto, Rajshahi.
" R. R. Pope	Ditto, Jessore.
" F. F. Handley	Ditto, Nudia.
" J. F. Bradbury	Ditto, Pubna and Bogra.
" T. L. Jenkins	Magistrate of Dacca.
" C. J. S. Faulder	Ditto of Purnea.

are opposed to any change in the first paragraph of the section.

In regard to the third paragraph of the section, the opinion of a large number of officers is in favour of the suggestion made by the Hon'ble Mr. Justice Beverley that "it should be distinctly laid down that it is the duty of the High Court in such references to determine the case on the merits in the same way as on an appeal from a sentence passed in a trial by a Sessions Judge with assessors."

It appears that there are only two alternatives before the Government—(1) to accept the wording proposed by the Jury Commission, or (2) to revert to the wording of the Code of 1872 in the one case and to that of Mr. Justice Beverley in the other. The Lieutenant-Governor directs me to say that he prefers the wording of the Code of 1872 and the suggestion made by Mr. Justice Beverley. If this is not approved, he would accept the proposal of the Jury Commission, but would omit the word "clearly" in the expression "and is clearly of opinion that it is."

5. The next question is, whether the Government should be allowed to appeal on the facts against a verdict of acquittal when the jury are not unanimous and the Sessions Judge disagrees with the verdict, but does not consider it necessary to refer the case to the High Court. The Commission state in paragraph 42 of their Report that they do not recommend this course

as they consider that the alteration already proposed in section 307 of the Code will provide adequate protection against failures of justice. On this point also there is a very even conflict of opinion among the officers consulted; but if there is any balance either way, the preponderance of authority is against the proposal. This being the case, the Lieutenant-Governor thinks that it would be sound policy on the part of Government to accept the conclusion of the Commission. It is quite certain, moreover, that any proposal to extend the right of appeal against an acquittal in any shape or form will meet with the strongest opposition from the educated classes in Bengal.

6. The proposal to empannel special juries is supported by the Commission in paragraph 34 of their Report. Here, again, there is much diversity of opinion, but the majority of the officers consulted favour the proposal. The procedure followed in the High Court provides for special juries. Section 276 of the Criminal Procedure Code renders a special jury obligatory in Presidency towns, in all cases where the offence is punishable with death, and leaves it to the Judge to decide in any other case whether the prisoner shall be tried by a special or by a common jury. There appear to be no particular qualifications necessary for service on a special jury, and as a matter of practice the lists of jurors are made up by the Clerk of the Crown, who places upon the special jury list the names of those persons whom he considers from their position or education to be fit and proper persons to be so privileged. The two lists are distinct, and persons selected as special jurors are not liable to serve on common juries. The institution of a special jury is therefore well known in India, and the Lieutenant-Governor agrees with the majority of officers consulted that there would be no great difficulty in extending it to mufassal cases. But it does not seem necessary to have separate lists, and probably the best arrangement would be to retain one jury list as at present and to authorise the Judge and Collector jointly to select a certain number of special jurors not to exceed 20 per cent., and then to declare as in the case of the High Court that all offences punishable with death and all other cases which the Sessions Judge in his discretion might determine should be tried by a special jury. If this recommendation is accepted, it would be necessary to amend the law accordingly.

7. Regarding the seclusion of jurors, the Commission observe in paragraph 41 of their Report that the High Court has power, under section 296, Criminal Procedure Code, to make rules in this direction, but that it has never seen its way to framing any such rules, and that the Commission find themselves equally unable to suggest any rules which would not be repugnant to the prejudices and customs of the native community in Bengal. The majority of officers consulted accept this view, and the proposal in the Lieutenant-Governor's opinion may be allowed to drop.

8. In paragraph 39 of their Report, the Commission, appear to favour some action in the direction of affording better accommodation for jurors. This is a matter which can only be dealt with very gradually by Government as opportunities offer and calls for no orders at present.

9. In regard to the remuneration of jurors, the Commission (see paragraph 40 of their Report) were unable to come to any agreement, and observed that the matter was of no great importance, and might be left to settlement by Government. On this point there is the usual wide difference of opinion among officers consulted, but there is a decided preponderance of opinion in favour of granting travelling allowance. With this proposal the Lieutenant-Governor agrees. He considers that the grant of such allowance should be regulated by the provisions of the Civil Service Regulations, and that it should be limited to men coming from a distance of more than 10 miles. On the question of remuneration to jurors, he is disposed to think that a discretion might be allowed to Judges to grant a daily allowance at a rate not exceeding ten rupees a day in special cases in which the attendance of the jurors had been required for five days and upwards.

10. Upon the important question of extending the system of trial by jury to other offences, the Commission as a body (see paragraph 30 of their Report) decline to express any opinion. But both Sir Romesh Chunder Mitter and Maharaja Sir Jotendro Mohan Tagore, Bahadur, in their notes annexed to the report recommend the extension.

Sir Romesh Chunder Mitter observes:—

"There seems no reason why offences under Chapter IX or Chapter XXII of the Code should not be triable by a jury when committed to the Sessions, considering that offences against public justice are so triable. Similarly, the offence of defamation (Chapter XXXI) seems to me to be an offence eminently fit for trial by a jury."

He then proceeds to make the suggestion that all offences in the Sessions Court in jury districts should be made triable by jury, except those which are specially mentioned by the

Local Government. This recommendation is expressly concurred in by the Maharaja. The Lieutenant-Governor finds that there is a large body of opinion in favour of the recommendation of the native members of the Commission. Messrs. Matthews, B. L. Gupta and Geidt go so far as to recommend the extension of jury trial to all sessions cases. Mr. Anderson, Mr. Knox-Wight and Mr. Price would extend jury trial to all cases except political offences. Mr. Caspersz would extend it to all sessions cases except those under Chapters VI, VII, VIII, and IX of the Indian Penal Code. In His Honour's opinion therefore there is a sufficient body of opinion to justify the Government in making some further extension in regard to the class of cases triable by jury, and he believes that on political grounds it is desirable that some extension should be allowed. At the same time he considers that offences by or relating to public servants, such as those defined in Chapter IX of the Indian Penal Code, are a class to which it is highly undesirable that the system of jury trial should be extended. Attention is invited in this connection to the following extracts from the remarks made by Mr. J. Whitmore, Sessions Judge, Birbhum, and Mr. H. G. Cooke, Commissioner of Orissa:—

Mr. Whitmore observes—

"As to Chapter IX * * * *, these contain provisions affecting public servants * * * . These seem to me the very last kind of offences which should be submitted to the irresponsible mercies of a popular body."

Mr. Cooke says—

"With regard to Chapter IX, I do not think it would be conducive to the ends of justice that public servants should be tried by jury: it would weaken their legitimate independence and fearlessness in the discharge of their duties if they knew that they were amenable to a jury, individual members of which harboured resentment towards them for acts done in their official capacity."

With these remarks Sir Charles Elliott concurs, but he would accept the suggestion of Sir Romesh Chunder Mitter so far as to propose that the system of jury trial should be extended to sessions cases under—

Chapter XXI Defamation.
,, XXII Criminal intimidation, insult and annoyance.

It will be remembered that, in accordance with the recommendation of the Jury Commission (paragraph 29 of their report), offences relating to marriage, which had been made triable by jury by this Government, were excluded from the category of cases so triable. The reasons given by the Commission in support of the recommendation appear, however, to the Lieutenant-Governor far from cogent, and he observes that several officers, such as Mr. Kedar Nath Roy, Mr. Pratt, Mr. Beighton, Mr. Kennedy and Mr. Grierson, would extend jury trial to marriage cases. In the circumstances, the Lieutenant Governor thinks that cases under Chapter XX ought to be added to the list of offences triable by a jury.

There remains the difficulty pointed out by Sir R. C. Mitter regarding offences under special Acts and under other sections of the Penal Code which are not triable by a jury, although the main offence for which a committal has been made is so triable. This, however, is not the real difficulty, and although the point is not noticed by local officers consulted, the answer to it seems to be sufficiently afforded by the provisions of the amending Act X of 1886, section 9, which direct that "when the accused is charged at the same trial with several offences of which some are and some are not triable by jury, he shall be tried by jury for such of those offences as are triable by jury, and by the Court of Session, with the aid of the jurors as assessors, for such of them as are not triable by jury."

11. The next question relates to the extension of jury trial to other districts. Upon this point neither the Commission nor any individual member of it has expressed any opinion. But in my letter with which the Report of the Jury Commission was circulated to local officers, their opinion was particularly invited regarding the extension of the system of trial by jury to districts other than those in which the system is at present in force.

The early history of this question is contained in this Government letter to the High Court, dated 17th July 1884, which is reproduced on pages 6 to 9 of the report of the Jury Commission. In February 1867 Sir Cecil Beadon, before severing his connection with the Government of Bengal, recorded his conviction that the trial of all offences before the Courts of Session in all parts of these provinces ought to be by jury, and that the system might be universally adopted not only without prejudice to the administration of criminal justice, but with decided benefit to the Courts and with increased confidence on the part of the public in their judgments. The Government of India were, however, not in favour of the extension of the system, as they preferred that its extension should depend in the main on

the assured capacity of the Judges available. In May 1867 the High Court observed that the results of the jury system had not been sufficiently encouraging to warrant them in recommending its extension either to new districts or to other classes of offences. In 1884 Sir Rivers Thompson suggested that the question should be reconsidered, and invited the High Court to favour him with an expression of their opinion as to the advisability of extending the jury system to the districts of Midnapore, Rajshahi, Rangpur, Mymensingh, Chittagong and Cuttack. It was added that the local officers concerned would be at the same time consulted whether it would be possible to prepare for these districts a sufficient jury list. The High Court (Mitter, Norris and Ghose, JJ., dissenting) replied that the extension of the jury system proposed was not desirable. The local officers also reported that the supply of qualified persons as jurors was insufficient, and under the Lieutenant-Governor's orders the proposal was allowed to drop.

12. Nearly ten years have elapsed since the question was raised by Sir Rivers Thompson and it will be seen from the summary given below of the opinions now received that a considerable number of local officers are in favour of extending the jury system to other districts.

Among Judges, Messrs. Knox-Wight, Brojendra Kumar Seal and Handley recommend extension generally, but do not specify districts to which extension should be made.

Mr. C. P. Caspersz, Judge of Chittagong, recommends the extension of the system to that district. He points out that there are 306 assessors on the list. Mr. Oldham, the Commissioner of the Division, recommends the extension to Tippera, Noakhali and Chittagong. He writes :—

"In Tippera and Noakhali good special jury-lists could be framed ; common juries would not be found so easily. But in Chittagong a competent common juryman could be found in every village, and these jurymen would, unlike jurors in other places, be not only willing but eager to serve. For this reason I know of no place in the province for which the system is so suitable as Chittagong."

The case of Mymensingh is somewhat similar. Mr. F. H. Harding, the District Judge, has discussed the question at length, and on the assumption that all sessions cases would be tried by jury, considers that the number of competent jurymen in the district would be found sufficient. He recommends the extension of the jury system into Mymensingh, but tentatively at first. Mr. A. E. Staley, the Judge of Backergunge, gives no opinion in regard to the extension of the system to his district, but gives a list of 310 assessors who would form the jury list if the jury system were introduced. As many as 74 jury cases were tried in the district during 1892, and it seems therefore that the number of jurors would hardly be sufficient. Mr. J. Posford, the Judge of Faridpur is altogether opposed to any extension of the jury system in Bengal. A memorial is, however, presented on behalf of the People's Association of that district, praying for its extension, and a long and detailed catalogue of some 400 names is appended to their letter of persons said to be qualified to serve on a jury. The system is already in force in Dacca. Mr. Luttman-Johnson, the Commissioner of the Division, is prepared to extend the system to all the districts of his Division if " the jury-lists are prepared on a more popular basis, and if the present system under which Judges are placed on the Bench without experience as District Officers, and before they have arrived at an age which is usually reputed to bring judicial discretion, is amended. "

Mr. P. Nolan, the Commissioner of the Rajshahi Division, sees no objection to the extension of the system, and thinks it might be safely introduced in the Rajshahi district. Mr. J. C. Price, the Magistrate of the district, is of the same opinion, and says that there could be no difficulty in finding a sufficiently large number of qualified persons to serve as jurors. Mr. B. C. Seal, the District Judge, recommends that the trial of offences under Chapters XV, XVII, XX and XXI only of the Indian Penal Code should be held in the Rajshahi district with the aid of a jury. He agrees that there could be a sufficient jury-list. Kumar Gopendro Krishna Deb, the Magistrate of Pabna, is of opinion that the jury system should be extended to Pabna, Rajshahi, and Rangpur. Mr. J. F. Bradbury, the District Judge, supports extension to Pabna, and states that a sufficient number of capable and willing jurors is available. Mr. A. W. Mackie, the Judge of Rangpur, is opposed to the extension of the jury system. Mr. D. Cameron, Judge of Dinajpur, does not recommend its extension to his district, but advises that it should first be tried in more advanced districts like Jessore and Midnapore.

Mr. E. V. Westmacott, the Commissioner of the Presidency Division, does not consider that the jury system should be extended in any direction. Mr. F. F. Handley, the Judge of Nadia, is in favour of extending the system which is already in force in his district. Mr. R. R. Pope, writing as Officiating Judge of Jessore, observes that trial by jury might safely be extended to Jessore, but not to Khulna. He writes : " Taking 50 cases per annum

as the average, and five men for a jury, 250 jurors would be required, and we have now on the list 414 assessors, all of whom would, I am informed, be competent to serve on the jury." The system is already in force in Murshidabad.

Mr. A. W. B. Power, Commissioner of Burdwan, is opposed to juries altogether, and to any extension of the system. Mr. F. W. Duke, the Magistrate of Hooghly, is in favour of its extension to quietly progressive districts, such as those of the Burdwan Division, which do not already possess it. Mr. D. B. Allen, the Magistrate of Midnapore, sees no good reason why the jury system should prevail in seven favoured districts only and not in others. In his opinion many non-jury districts which were in a backward state when the system was first introduced have become as civilised as Nadia was 30 years ago. He would extend the system to the six districts (among which Midnapore is included) recommended by Sir Rivers Thompson in 1884. Mr. J. Pratt, the Judge of the district is, however, opposed to the extension of the system to Midnapore. He writes—

"The native gentlemen whom I have consulted are agreed with me that it should not be extended. Of the 214 persons now included in the list of assessors, less than 150 would be suitable as jurors, for most of the mukhtears, pleaders, muharrirs and the like would have to be eliminated. If the area for selection were extended, much inconvenience to individuals would be occasioned, and there would be loud complaints, and even then I doubt whether as many as 175 eligible men could be found altogether. Now, taking the average number of cases triable by jury as 50 per annum, it would be necessary to summon about 12 jurors for each case, which would require a list of 600 names if each juror be summoned once a year, or 300 if summoned twice. Thus, under existing circumstances, the people have no wish for the extension of the jury system to this district, as it would entail far more inconvenience on those concerned than they are prepared to submit to."

Mr. J. Knox-Wight, the Judge of Hooghly, where the jury system already exists, is in favour of its general extension. Mr. B. G. Geidt, the Judge of Bankura, and Mr. J. Whitmore, the Judge of Birbhum, are opposed to its extension to their districts.

Mr. C. C. Quinn, the Commissioner of the Bhagalpur Division, is not in favour of extension, nor is Mr. H. Holmwood, the Officiating Judge of Bhagalpur, nor Mr. H. F. Matthew, the Judge of Purnea. Mr. Holmwood writes that, so far as he is aware, there is no demand whatever for the introduction of a jury system in this Sessions charge, and it would in his opinion be an institution eminently unsuited to a district of mixed races, where the people have not become accustomed to it by 30 years' experience.

Mr. A. Forbes, the Commissioner of Patna, and all the District Officers of his Division except Mr. Manisty, are opposed to the extension of the jury system. Mr. Manisty, the Magistrate of Saran, would extend it to Midnapore, Bhagalpur, Muzaffarpur, Saran, and probably many other places where suitable persons can be found to serve as jurors. The only three Judges of the Division who have expressed an opinion—Messrs. A. C. Brett, (Gaya) J. Kelleher (Saran), and G. G. Dey (Shahabad)—are opposed to the extension of the system to their districts. Mr. Kelleher, however, observes that extension must follow as a necessary consequence of the report of the Jury Commission, and that the only question is the selection of districts.

Mr. H. G. Cooke, the Commissioner of Orissa, and Mr. B. L. Gupta, the Judge of Cuttack, are opposed to the extension of trial by jury to the Orissa Division. Mr. F. W. R. Cowley, the Judicial Commissioner of Chota Nagpur, points out that it would be premature to extend it to his division.

13. The Lieutenant-Governor has carefully considered the opinions summarised above, and is satisfied that some extension of the system of jury trial is possible and even desirable. He observes that the local officers concerned are generally agreed in advocating the extension of the system to the districts of Chittagong, Mymensingh, Rajshahi, and Jessore. With regard to the Midnapore district, the Lieutenant-Governor considers that there is little force in Mr. Pratt's arguments which are as applicable to the districts to which the system has already been extended as they are to Midnapore. Midnapore is a comparatively advanced district with a large educated community, and is as suitable for the introduction of the jury system as any other district in Bengal. He fixes rather too high a number in saying that 12 jurymen are required to be summoned for every separate case. Allowing for rejections, there should be 10 persons summoned for every case in which a jury of five is required, and no one should be summoned more than twice in a year, the proportion between Jurors and Sessions cases should therefore be tenfold as a maximum, and fivefold as a minimum. There does not seem to be any reason why mukhtears and pleaders should, as a class, be held disqualified to serve as jurors. Again, the reasons adduced by Mr. Holmwood against the extension of the system to the Bhagalpur district seem to the Lieutenant-Governor to be of little weight. Bhagal-

pur is an enlightened district, the head-quarters of a Division, and Monghyr, which forms part of Bhagalpur for judicial purposes, is the residence of a large number of persons highly qualified to serve on a jury. There is probably no district in Bengal to which the extension of the system can be more easily justified. The table given in the margin shows (1) the number of sessions cases disposed of in 1891 in the six districts to which extension of the system is contemplated by the Lieutenant-Governor, (2) the number of assessors attached to each district, and (3) the number of possible jurors available in each of them. It seems to the Lieutenant-Governor that, looking to the adoption of the system in places like Krishnagar and Berhampore 30 years ago, it is improbable that a sufficient number of competent jurors cannot be found in any of the six districts enumerated.

	No. of sessions cases in 1891.	No. of assessors in 1891.	No. of possible jurors.
Chittagong ...	35	262	Any number readily available.
Mymensingh ...	100	552	800
Rajshahi ...	24	172	382
Jessore ...	40	291	414
Midnapore ...	43	213	No estimate supplied.
Bhagalpur ...	97	651	Ditto.

The Lieutenant-Governor is, therefore, prepared to recommend the extension of the system to Chittagong, Mymensingh, Rajshahi, Jessore, Midnapore and Bhagalpur. But in making this recommendation, he directs me to say that he wishes it to be distinctly understood that it is made subject to the following provisos: (1) that the alterations in sections 303 and 307 of the Code of Criminal Procedure, which have already been suggested in this letter, are made, and (2) that the two main classes of offences removed by the notification of this Government, dated the 29th October 1892, from the cognizance of juries, *viz.*, riot and murder cases are not made over to them.

Sir Charles Elliott desires to take this opportunity to make it clear that he has not altered his opinion about the unsuitability of jury trial as a system to India. He adheres to the views expressed in paragraph 5 of the letter from this Government, No. 122J.D., dated the 22nd June 1891, on the subject, with this modification, that he did not perhaps give sufficient weight to the difficulty experienced by Judges in charging a jury in their own language. This difficulty is referred to very forcibly in the subjoined extracts from the report of Mr. Whitmore, the Judge of Birbhum, to which the attention of the Government of India is invited :—

" Those who have proposed the extension of the jury system overlook the language difficulty, but I think the time has come when the truth should be told on this subject. In order to charge a jury effectually in their own language, a Judge must have an absolute mastery over it, greatly exceeding that usually possessed by the average native gentleman himself. How many of us can pretend to this, or any thing in the very slightest degree resembling this, whether in Bengali, in Urdu or in Uriya? One may know a language sufficiently well to converse freely therein with all sorts and conditions of men, and to conduct a trial therein to the absolute satisfaction of every one in Court, and to this stage of acquaintance with (say) *one* vernacular the average educated Englishman (even though not born in the country) may perhaps usually in time attain. But if you ask the same man to address a jury from the Bench, to speak without pause or hesitation, with that absolute correctness of idiom, and with that exact discrimination in the use of words without which a charge in a complicated case is manifestly far worse than useless, and to do this continuously for perhaps three or four hours without wearying, confusing, or disgusting the jury—nay I will even say without having been an object of silent derision to every native in Court a dozen times over—does any one really believe that he can do it?

* * * * * *

" The truth is that for an Englishman to administer justice in a foreign country and in a foreign language, without an interpreter, is a quite sufficiently difficult task in itself, and that, there is really no occasion whatever to go about to discover artificial methods of making it downright impossible.

" People think that because some Bengali pleaders and others speak English for hours quite or almost without accent or mistake, the converse is possible for Englishmen. But this is to forget many things, one of them being that the Bengali begins to learn English when he is a little boy; the Englishman learns Bengali when he is a grown man! Moreover, the Bengali gentleman, who is so admirably fluent in English, could not as a rule say three words in French or German; whereas we are liable to transfer between districts the languages of which differ quite as widely from Bengali as French or German from English.

" Besides the conditions of life in India render it infinitely more difficult for the Englishman to acquire the power of speaking *perfectly* any native language than any foreigner

finds it to learn the language of France or Germany. And yet I doubt whether out of every 20 educated Englishmen who have resided for a dozen or two dozen years in (say) France, a single one can be found competent to charge a French Jury even in one difficult case, still less to do so in the infinite variety of cases which would present themselves in the course of a judicial career."

On the other hand events have shown that this Government underrated the popularity of the system among the educated classes, and the political value which should be set upon it as a training for these classes and an admission of them to a share in the power of the Courts. Accepting this point of view, and assuming that the restrictions which are advocated as to the classes of cases not to be made over to juries will be carried out, the Lieutenant-Governor considers that the six districts now named are quite as fitted to exercise the power as the original districts were when it was extended to them 30 years ago. He would, however, make this extension tentatively, and subject to report at the end of a year as to the number of jurors actually found to be available and their regular attendance. The following remarks made by Mr. Harding, the Sessions Judge of Mymensingh, are quoted here as applicable more or less to all the districts to which it is now proposed to extend the system :—

"My experience of the present assessors' list is not very encouraging in this district (Mymensingh) ; out of four summoned for each trial, more than two but rarely attend, the others pleading illness or some other excuse. It is not improbable, however, that better support may be given to a jury system for many reasons the principal being that the jurors will have more power than assessors.

I am of opinion that the system of trial by jury might be introduced tentatively in this district and for a year only at first, and afterwards be continued from year to year until it is finally rooted in the district. It should be noted at the time of such introduction that the continuance of the system is contingent upon its receiving loyal support, and provision should be made in the law empowering a Judge, in the event of a sufficient number of jurors not attending in any case, to try that case with the aid of assessors."

14. The last point upon which opinion was invited relates to the revision of jury lists, and to the reduction in the number of exemptions allowed under clause (*k*) of section 320 of the Criminal Procedure Code. The Jury Commission observe in paragraph 38 of their report that Honorary Magistrates, who belong to a class of men best fitted to serve as jurors, are not liable to exemption under any of the provisions of section 320 of the Code, and recommend that all Honorary Magistrates as such should be included in all lists of jurors in the districts in which they reside. They also invite attention to the fact that exemptions have been granted to certain officers of the Eastern Bengal State Railway, to all Barristers practising in the mufassal, to certain officers on the East Indian Railway, and to local auditors on the staff of Examiners of Local Accounts ; also to the power vested in section 10 of Act VIII of 1878 in the Chief Customs Officer to exempt any officer of Customs whom he considers it necessary to exempt on grounds of public duty. They suggest that these exemptions should be carefully reconsidered, as they deprive the jury lists of some of the persons best fitted to serve, and further tend to take from the position of juror much of the dignity which should attach to it.

It has already been brought to the notice of the Government of India in my letter No. 26J.D., dated the 2nd May 1893, that Honorary Magistrates, as Judges within the meaning of the Code, are exempt from liability to serve as jurors or assessors. A large preponderance of officers consulted recommend that Honorary Magistrates should be included in the Jury List. The Lieutenant-Governor sees no objection to the adoption of this recommendation, and accordingly suggests that section 320 (*b*) of the Code be amended as follows:—"Judges excluding Honorary Magistrates." The rest of the suggestions made by the Commission relate to Government exemptions under clause (*k*). In regard to mufassal barristers, a considerable number of officers recommend that they should be included in the Jury List. The Lieutenant-Governor would, however, maintain the exemption, having regard to the fact that in England barristers cannot be compelled to serve on a jury. He would also maintain the exemption in the case of the Auditors of Local Accounts, as they are peripatetic officers with their head-quarters in Calcutta, and it will not be easy to render them liable for service in a mufassal district. As for Railway officers, and the subordinate officers of the Customs Department, it seems to the Lieutenant-Governor that the exemption in their case is a very reasonable one and should be maintained. Upon the whole, Sir Charles Elliott does not think that it can be said that the Jury Commission have shown that the discretion vested in the Local Government to exempt persons from serving as jurors has been abused.

15. With reference to paragraph 4 of the letter from the Government of India, I am to state that the Lieutenant-Governor has no objection to the proposal made that section 269 of

the Code of Criminal Procedure should be amended, so as to require that action under that section shall only be taken by Local Governments with the previous sanction of His Excellency the Governor-General in Council.

From the Secretary to Government, N.-W. Provinces and Oudh, to the Secretary to the Government of India, Home Department,—No. 2664, dated the 20th September 1893. No. 262.

I AM directed to reply to your letter No. 548, dated 6th May 1893, in which the opinion of His Honour the Lieutenant-Governor and Chief Commissioner and the Hon'ble Judges of the High Court and any other officers whom His Honour may think it advisable to consult on the various proposals, for amending the Criminal Procedure Code, dealt with in the report of the Jury Commission, dated 24th March 1893, is asked for. I am to forward, for the information of His Excellency the Governor-General in Council, a copy of the papers cited in the margin, being the replies received from the High Court and from the officers consulted.

(1) Letter No. 5080, dated 11th August 1893, from the Registrar, High Court of Judicature for the North-Western Provinces.
(2) Letter No. 947, dated the 8th June 1893, from the Judicial Commissioner of Oudh.
(3) Letter No. $\frac{4289}{F-759}$, dated the 18th August 1893, from the Legal Remembrancer to Government, North-Western Provinces and Oudh.
(4) Letter No. $\frac{308}{VIII}$, dated the 23rd June 1893, from T. R. Redfern, Esq., Sessions Judge, Bareily.
(5) Letter dated 26th June 1893, from H. G. Pearse, Esq., Judge of Agra.

2. The more important proposals for amending the Criminal Procedure Code dealt with in the report of the Jury Commission which seemed to require consideration are the following:—

(1) The amendment of section 307 with the object of removing all doubts and defining the duties of Sessions Judges and of the High Court in more clear language.
(2) The amendment of Section 303, so as to enable a Sessions Judge to ascertain and place on record the grounds for the verdict, or to put questions to the jurors or to direct the jury to return a special verdict on particular issues of fact.
(3) The amendment of Chapter XXIII of the Code so as to allow trial by special jury in certain cases.
(4) The amendment of section 319 so as to leave it to the discretion of the Local Government to determine on consideration of the circumstances of each district the area from which a juror should be selected.

3. With reference to the first suggestion, I am to say that the Lieutenant-Governor and Chief Commissioner is in favour of the modifications of the terms of the section proposed by the Jury Commission in paragraph 24 of the report. The last recommendation is unimportant so far as concerns these Provinces, where the districts are not of abnormal size and railway communication is good. With respect to point (2), I am to say that Sir Charles Crosthwaite entirely concurs in the views expressed in paragraph 3 of your letter under reply. He observes that the Jury Commission, while reluctantly rejecting the proposed procedure of requiring the return of special verdicts on issues framed by the Judge, refrained from explaining their reasons and from enumerating the evils which the adoption of such a course would, it was said, create. I am to invite the attention of the Government of India to the strongly expressed opinion of the High Court of Judicature for the North-Western Provinces—an opinion which must carry great weight—that if the system of trial by Jury is to continue in this country it is absolutely necessary that the Judge should have the power proposed to be given to him. The reasons for the alteration of the law, which have been fully set forth in paragraph 8 of your letter No. 1108, dated 25th August 1892, and in paragraph 3 of your letter under reply, need not be repeated. The question of special juries [point (3)] is dealt with in paragraph 34 of the report of the Jury Commission. His Honour is of opinion that what is required is to retain men of education and position on the common jury list, which should not be composed alone of pleaders and tradesmen. Sir Charles Crosthwaite agrees entirely with the conclusions on this matter recorded in paragraph 18 of the Despatch to Secretary of State, No. 32 (Judicial), dated 21st December 1892, and with the opinion of the Hon'ble Mr. Justice Prinsep therein quoted.

4. In reply to paragraph 4 of your letter under reply, I am to say that Sir Charles Crosthwaite is of opinion that the proposed amendment of section 269 of the Code of Criminal Procedure, so as to require that action under that section shall only be taken by the Local Government with the previous sanction of the Governor General in Council, is open to objection. His Honour agrees with the remarks made in paragraph 20 of the above quoted Despatch: he has no reason for assuming that any alteration in the law is required, and the

consideration of the necessity of any alteration has not been forced upon his attention by anything that has occurred in these Provinces.

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263. From P. GRAY, Esq., Registrar, High Court of Judicature, N.-W. Provinces, to the Secretary to Government, North Western Provinces and Oudh,—No. 5080, dated the 11th August 1893.

I am directed to acknowledge the receipt of G. O. No. $\frac{1293}{VI-598 B}$, dated the 22nd May last, with its enclosures, requesting the Court to favour the Government with an expression of opinion as to proposals for amending certain sections of the Code of Criminal Procedure dealing with the question of trial by jury.

2. In reply I am to convey the following observations as to the proposed amendments:—

(1) *Section 303.*—The Court is decidedly of opinion that if the system of trial by jury is to continue in this country it is absolutely necessary that the Judge should have the power to require the jury to return a special finding or findings on any relevant issue or issues which he may choose to submit to them.

(2) *Section 307, first paragraph.*—The words proposed to be substituted are a decided improvement.

(3) *Section 307, last paragraph.*—There is no objection to the proposed words. They simply define the existing practice of this Court.

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264. From H. F. EVANS, Esq., Offg. Judicial Commissioner, Oudh, to the Secretary to Government, N.-W. Provinces and Oudh,—No. 947, dated the 8th June 1893.

In reply to your letter No. $\frac{1294}{VI-598, B}$, dated 22nd May, I have the honour to state that I am not aware of any objection that could be taken to the amendments proposed to be made to section 307, Criminal Procedure Code. They are both of them so worded as merely to emphasise what is admitted to be the true intention of the law as it now stands and not to introduce any actual change in the law. It would appear, however, from the report of the Commission that in order to secure the law being carried out in accordance with the intention of its framers, it is necessary to make these alterations, that intention having been lost sight of by the Courts in Bengal, at any rate in some instances.

2. I may add that the Additional Judicial Commissioner (whose opinion has also been called for by you and with whom I have discussed the matter) has authorised me to say that he agrees with me in the opinion I have expressed.

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265. From J. DEAS, Esq., Legal Remembrancer to Government, N.-W. Provinces and Oudh, to the Secretary to Government, N.-W. Provinces and Oudh,—No. $\frac{4289}{F-759}$, dated the 18th August 1893.

With reference to your No. $\frac{1294}{VI-598 B.}$ dated 22nd May 1893, I have the honor to reply as follows:—

1. In view of the facts as stated in paragraph 24 of the report of the Commission, and in paragraph 14 of the despatch, dated 31st December 1892, that the remedies provided by section 307 of the Code of Criminal Procedure to prevent miscarriages of justice through erroneous verdicts have not been consistently applied by Sessions Judges, and that the practice of the Judges of the High Court has not been uniform in dealing with references under the above section, I am of opinion that the amendment of this section of the Code in the manner proposed by the Commission is desirable. Every case in which the Sessions Judge disagrees with the verdict of the jury, and is of opinion that he cannot give effect to it without causing a failure of justice, should, it seems to me, be referred to the High Court, and in dealing with the reference the High Court should form an independent opinion on the merits of the case in the same way as in an appeal.

2. As regards section 303 of the Code of Criminal Procedure I differ from the conclusions arrived at by the Commission, and am of opinion that this section should be amended, either with the view of enabling the Judge to ascertain and fully record the reasons of the jury for their verdict, or with the view of empowering the Judge to require from the jury special verdicts on particular issues of fact. As the Judge will be bound, under section 307 (amended in the manner proposed), to make a reference to the High Court in all cases in which he disagrees with the verdict of the jury, and is of opinion that he cannot give effect to it without causing a failure of justice, it is, I consider, most desirable that he should be able to ascertain the reasons for the verdict. The great assistance which would thereby be afforded to the Judge in determining whether a reference should be made under section 307, and to the High Court in deciding the case if referred to it, is an advantage which appears to me to outweigh the objection urged by the Commission against the proposed amendment.

3. For the reasons given in paragraph 16 of the Despatch and in paragraph 42 of the Report of the Commission, I do not think that a right of appeal should be allowed against the verdict of a jury; nor, for the reasons given in paragraph 18 of the Despatch, do I think that the establishment of special juries in the mufassil is advisable.

4. The seclusion of jurors during the trial and up to the delivery of their verdict is, I consider, advisable: and I think that a system of payment to jurors for their attendance might be introduced.

5. I agree with the rest of the conclusions of the Commission in paragraphs 35, 36, 37 and 43.

From T. R. REDFERN, Esq., Sessions Judge of Bareilly, to Secretary to Government, North-Western Provinces and Oudh,—No. $\frac{308}{VIII}$, dated the 23rd June 1893. No. 266.

In reply to your letter No. $\frac{1294}{VI-599B}$, dated the 22nd May 1893, I have the honor to submit my opinion on the proposed amendments.

The expression "*so completely*" in section 307 of the Criminal Procedure Code insists emphatically upon an extreme opposition between the Judge's opinion and the verdict of the jury as a condition precedent to a reference to the High Court, and is calculated to discourage such references. If, in districts where trial by jury has been introduced, there is reason to believe that verdicts not warranted by evidence are frequently returned, and the Government is not prepared to restrict or withdraw that form of trial, an amendment by substitution of the words "*and is clearly of opinion that it is*" seems desirable.

As to the second proposed amendment of the same section, it should be enacted in view of the practice of some Judges of the High Court. When a reference is made under this section, the Judges should come to its consideration with an open mind unclogged by any presumption in favour of the righteousness of the verdict, and should form an independent opinion upon the merits.

From H. G. PEARSE, Esq., Judge of Agra, to Secretary to Government, N.-W. Provinces and Oudh,—dated the 26th June 1893. No. 267.

In reply to your No. $\frac{1294}{VI-598B}$ of 1893, dated Naini Tal, May 22nd, 1893, accompanying a letter of Government of India, Home Department, No. 548, dated May 6th, 1893, and enclosures, I beg to forward these remarks.

2. With regard to paragraph 3 of the Home Secretary's letter and paragraphs 32 and 33 of the Jury Commission's report, I am of opinion that section 303, Criminal Procedure Code, should be amended, not merely to *empower*, but to *direct*, a Sessions Judge to require and record a special verdict on particular issues of fact.

3. I consider that the reason given by the Jury Commission in paragraph 32 of its report, page 22, carries its own condemnation with it. The report objects to "anything in the nature of a cross-examination of the jurors as to details of a case so as to obtain their opinion on portions of the evidence. Amongst these it will be sufficient to say that it may very frequently happen that the jurors may individually arrive at the same conclusion by different processes of reasoning, or they may find difficulty in expressing intelligently or logically a conclusion fairly arrived at on consideration of the entire case."

4. If the above sentence had been a prelude to a recommendation for the abrogation of the whole system of trial by jury I could have understood it. As a prelude to a recommendation that one of the few safeguards against absolute perversity or ignorance on the part of jurors should be abolished, I simply cannot understand it. If jurors are unwilling or unable to express "intelligently or logically their conclusion," how is either a Sessions Judge or High Court to say whether that "conclusion is fairly arrived at on consideration of the whole case" or not?

5. Section 303, Criminal Procedure Code, is entirely permissive. It says "and the Judge may ask them (the jury) such questions as are necessary to ascertain what their verdict is."

6. The different Calcutta rulings in the Weekly Reporter are absolutely at variance, and as the section at present stands, I think the questioning power is not likely to be adequately utilised. I am in short in favour of stiffening and not relaxing the section.

7. The Commission in section 33 after giving excellent reasons why a Judge should be enabled to direct a jury to return a special verdict, *viz.*, that "the proposal is supported by high authority, and that it would be an advantage to the High Court in referred cases to have a special instead of a general verdict to deal with," stultifies that finding by declining to give effect to it, on the ground of greater, but entirely unspecified, evils that might accrue.

8. As to section 269, Criminal Procedure Code, it confers certain authority upon Local Governments. There is no provision in the Code of Criminal Procedure for any appeal or proceedings and revision against the exercise of such authority. It would appear that the Legislature intended the order of the Local Government to be final.

9. In practice it is most certainly not final. An agitation, the nature of which is well known, which is now defined in the English language as "trial by newspaper" sprang up on the publication of Sir Charles Elliott's notification of October 20th, 1892, restricting trial by jury in Bengal. Although the Viceroy in Council, acting presumably as the ultimate administrative authority in India approved the notification, this approval was overruled by the Secretary of State. The question was handed over to a Commission. On the report of that Commission, dated 24th March 1893, the notification was withdrawn.

10. The question asked in paragraph 4 of the Home Secretary's letter No. 548 is as to the advisability of amending section 269, Criminal Procedure Code, by making the previous sanction of the Governor General in Council a necessary preliminary to action by a Local Government.

11. If it is to be recognized that the authority of a Local Government, *vide* section 269, Criminal Procedure Code, is not to be considered final, which means the practical repeal of that section, matters would in my opinion only be advanced a stage, and would not attain finality by the antecedent sanction of the Governor General in Council having been obtained.

12. There would still remain the Secretary of State. In the present instance the Secretary of State has reversed the concurrent judgments of the Local Government and the Governor General in Council.

13. In my opinion it would be far better to avoid the recurrence of this official humiliation not only of a Local Government, but of the Supreme Government of India, by making the antecedent sanction not only of the Governor General in Council but of the Secretary of State necessary to any future modifications of the range and extent of trial by jury in India. I cannot see that short of maintaining section 269, Criminal Procedure Code, in its present shape, and resolutely recognising it as a final authority, there is any other logical way out of the *impasse*.

I gather that opinions are only required on the above two points mentioned in the Home Secretary's letter No. 548 dated 6th May, but if they were intended to cover a wider range, I shall be happy to furnish them.

No. 268. From the Secretary to the Chief Commissioner of Assam, to the Secretary to the Government of India, Home Department,—No. $\frac{86L.\ L.}{7331}$ J., dated 9th September 1893.

I am directed to acknowledge the receipt of your letter No. 550, dated the 6th May 1893, forwarding copies of certain papers on the working of the system of trial by jury in Sessions Courts, and asking, with reference to the Report of the Jury Commission, for an expression of the Chief Commissioner's opinion on certain proposals for amending the Criminal Procedure Code.

2. In reply I am to communicate the following remarks of the Chief Commissioner on the proposed amendments.

3. *Amendment of section 303, Code of Criminal Procedure.*—The general opinion of the officers whom the Chief Commissioner has consulted is that there is no sufficient reason for altering section 303 as proposed by the Government of India, on the ground that the section in question, as it stands, already allows the Judge to question the Jury, and that it is not desirable to allow a Judge to cross-examine a Jury either before or after a verdict has been delivered. Mr. Ward's experience, however, as a Judge in Jury districts, extending over seven years in the Assam Valley districts and nine months in the district of Hughly in Bengal, compels him to dissent entirely from this conclusion. He certainly deprecates the unnecessary cross-examination of jurors, but the same time, there is no disputing the fact that a wrong verdict may arise either out of an erroneous view of the facts, or out of erroneous inferences or conclusions drawn from facts admitted by the Jury to be proved ; it also occasionally arises out of the Jury totally disregarding the Judge's statement of the law applicable to the facts which the Jury may find to be proved. When a juror returns a verdict which the Judge considers to be erroneous, the latter, unless he is empowered to question the Jury, has no means of knowing whether the Jury differ from him on the facts, or on the inferences to be drawn from them, or as to the law applicable to them ; and there is no doubt, the Chief Commissioner thinks, that a Judge often refrains from referring to the High Court cases in which he differs from the verdict of the Jury because of his uncertainty as to the view which the Jury has taken of the evidence adduced by the prosecution. Mr. Ward can certainly say that,

had he been in a position to remove this uncertainty, he would have troubled the High Court with many more references than he actually did during his term of service as a District Judge. Ordinarily he would have hesitated to refer any case in which the Jury had unanimously come to the conclusion that the witnesses for the prosecution were not worthy of credit, because he is of opinion that the average native juryman can better estimate the degree of credibility to be attached to the evidence of native witnesses than a European Judge can. If, on the other hand, Mr. Ward had been in a position to report to the High Court that the Jury had agreed with him in thinking that the facts which the prosecution had undertaken to prove, had been proved, and that the witnesses for the prosecution were deserving of full credit, but that the Jury had declined to act upon his charge to them that they must draw certain reasonable inferences from those facts, and apply the law to them as stated in his charge, and upon those inferences and his statement of the law find the accused guilty, the case would, have been very different, and a reference to the High Court would certainly have been made. References so made would, the Chief Commissioner thinks, result in a far larger percentage of referred verdicts being set aside by the High Court than are shown in the report of the Commission to have been actually set aside in past years ; for so long as the High Court has no means of knowing what view the Jury has taken as to the credibility of the evidence given in a case, the Court will naturally hesitate to set aside any verdict which is not shown on the record to be a manifestly perverse verdict ; but where all doubt is removed on this point, and the Court finds that both Judge and Jury are agreed upon one or more issues of fact and differ only as to the conclusions which should be drawn from them, or as to the law applicable to them, all grounds for hesitation in deciding whether the verdict is erroneous or otherwise is at once removed.

It is this reluctance on the part of Judges to refer cases to the High Court and the reluctance of the High Court to set aside jury verdicts unless they are shown to be manifestly perverse that, in the opinion of the Chief Commissioner, renders the statistics of references and of orders passed by the High Court on such references, of very little value for the purpose of determining whether the jury system in any part of India has proved successful or otherwise. This reluctance will not be removed by amending section 303 to the limited extent proposed by the Jury Commission, but, Mr. Ward thinks, it will to a very great extent be removed by adopting the amendment proposed by the Government of India in paragraph 3 of the Home Department letter under reply.

In paragraphs 20 and 22 of the Report of the Jury Commission it is assumed that when a Judge does not refer a case in which he differs from a verdict, this is due to the Judge's dissent not being complete. Mr. Ward's own experience does not support such an assumption. The reluctance of the High Court of Calcutta to set aside jury verdicts where the case against the accused depends entirely upon the degree of credibility to be attached to the witnesses for the prosecution is, the Chief Commissioner ventures to think, sufficiently well known to every District Judge in Bengal, and is quite sufficient to explain why a Judge hesitates to refer such cases even where his dissent from a verdict is complete. It necessarily follows that in cases in which the evidence for the prosecution is mainly circumstantial, a Judge will hesitate to make a reference to the High Court when he is not in a position to show the Court that the verdict was not in any way due to the Jury having discredited the witnesses for the prosecution.

It is for these reasons that the Chief Commissioner strongly advocates the amendment of section 303 in the direction indicated by the Government of India. That section, as it stands, is altogether insufficient to enable the Judge to question the Jury in order to ascertain the grounds of their verdict. It only allows of questions being put to ascertain what their verdict actually is. Improper cross-examinations of a Jury by the Judge can be easily checked by the High Court who would see that the amended section is not abused. If considered necessary, one or more examples might be attached to the amended section, indicating the kind of questions which should not be put to a Jury. Thus, a Judge should, in the Chief Commissioner's opinion, certainly not be allowed to ask a juryman what witnesses he believed and what witnesses he did not believe, or on what grounds he discredited any particular witness or the evidence for the prosecution generally.

4. *Amendment of section 307, Code of Criminal Procedure, as proposed by the Commission.*— In the event of section 303 being amended as proposed by the Government of India, the Chief Commissioner sees no reason for amending section 307 ; but, on the other hand, if the proposed amendment of section 303 is not adopted, the proposed amendment of section 307 may, in Mr. Ward's opinion, be accepted. The objection to this latter amendment is that it practically abolishes what the Chief Commissioner understands to be meant by the "Jury System." If the verdict of a Jury is not accepted as final where it is not manifestly perverse or wrong or contrary to law, a Jury is not better than a couple of Assessors ; and the

Chief Commissioner is inclined to think that, if native feeling resents the withdrawal of a few classes of cases from trial by jury in the seven districts of Bengal, or in the six districts of the Assam Valley, it might still more strongly resent the adoption of a proposal which involves practically the adoption of the jury system, as popularly understood.

Amendment of section 569, Code of Criminal Procedure—Mr. Ward has no objection to the amendment of section 269 as proposed in paragraph 4 of the letter under reply.

6. With the exception of the proposed amendment of section 307 of the Criminal Procedure Code, the Chief Commissioner agrees to all the proposals made by the Jury Commission.

7. As regards paragraph 5 of your letter, I am to invite attention to the Chief Commissioner's Notification No. 4279J., dated the 11th May 1893, forwarded under cover of my letter No. 85L. L.—4519J., dated the 17th May 1893.

No. 269. From H. W. C. CARNDUFF, Esq., Registrar of the High Court of Judicature at Fort William in Bengal, Appellate Side, to the Secretary to the Government of India,—No. 2554, dated the 18th July 1893.

I am directed to acknowledge the receipt of your letter No. 550, dated the 6th May last, and am in reply to communicate the following observations of the High Court on the subject of the recommendations made by the Jury Commission.

2. The Judges approve of the amendment of section 307 of the Code of Criminal Procedure proposed by the Commission.

3. As regards the proposal that section 303 of the Code should be amended so as to empower a Sessions Judge to require a special verdict on particular issues of fact, I am to say that the Judges agree with the Commission in the view expressed in paragraphs 32 and 33 of the Report and do not recommend any change in the law, believing as they do that such a change would be followed by practical difficulties of an embarrassing and far-reaching nature. It would, for example, furnish an additional ground for appeal from a conviction on the verdict of a jury, either that particular issues were not framed when they ought to have been framed, or, if framed, that they were improperly put or misunderstood by the jury. Either argument might no doubt in some cases be legitimate and reasonable; but there would be a danger of its being abused, and this might lead to results which would not be in the interests of the administration of justice. Such difficulties as the proposed alteration might cause in the hearing of appeals would, in the opinion of the High Court, far more than counterbalance any benefit likely to arise therefrom in a case such as that mentioned in your letter, in which, if the Judge entertained any doubt as to the verdict on the charge of theft, he ought to have told the jury that it was their duty to convict on the charge of dishonestly receiving stolen property in the event of their believing the evidence adduced in proof of that offence only. The occurrence of such a case, moreover, would not, in the opinion of this Court, justify so radical and dangerous a change in the law.

4. Referring to paragraph 34 of the Report, I am to say that the Judges are inclined to concur in the views expressed by the Commission on the subject of the introduction of special juries, and would suggest that, if those views be accepted, persons of many of the classes exempted by section 320 of the Code of Criminal Procedure, should, in order to strengthen special juries, be made liable to serve as jurors.

5. As regards the area of selection of jurors, the Judges entirely approve of the recommendation contained in paragraph 37 of the Report.

6. The Judges would also invite the special attention of the Government of India to the remarks made by the Commissioners in paragraph 39 of their Report. They believe that, in this country, it is of vital importance that jurors should receive such treatment as may show them that their services are duly appreciated and that they themselves are held to be entitled to every consideration and respect in the discharge of the important functions devolving upon them: and there is reason to fear that the manner in which jurors are at present treated in the matter of accommodation, is largely responsible for the reluctance with which they attend.

No. 270. From the Government of India, Home Department, Judicial, to the Secretary of State for India,—No. 37, dated the 21st August 1894.

With reference to the correspondence ending with the Despatch from the Government of India No. 17 (Judicial), dated the 29th March 1893, we have the honour to address you on the subject of the Report of the Commission appointed to consider the question of trial by jury in Bengal.

2. We consulted the different Local Governments and the High Court at Calcutta on the matter, and copies of the letters and replies are forwarded herewith. It will be seen that we—

(1) asked for opinion on the various proposals made by the Jury Commission for amending the Criminal Procedure Code;

(2) in regard to the question of amending section 303 of the Criminal Procedure Code, repeated the view (which the Commission did not share) that the section should be amended so as to empower the Judge to require special verdicts on particular issues of fact; and

(3) enquired from the Local Governments whether they had any objection to section 269 of the Code being amended so as to require that action under that section should be taken by Local Governments only with the previous sanction of the Governor General in Council.

The Governments of Madras and Bombay were at the same time asked to state generally what changes, if any, in the jury system as now established in those Presidencies were recommended by them.

3. It will be convenient to discuss first the proposals (2) and (3) mentioned above, with reference to the replies received. The question in (2)—as to whether power should be given to Sessions Judges to put specific issues of fact before the jury—appears to us to have been discussed by many of those who have given their opinion upon it under the impression that the power to require a verdict on specific issues of fact would, if granted, allow an indefinite and extended cross-examination of the jury, who might be questioned as to their reasons for arriving at their verdict, and as to their belief in the evidence of any particular witness. We do not dispute that if powers of this nature were given to a Judge there would be a possibility of abuse. But our proposal to amend section 303 of the Criminal Procedure Code does not contemplate anything in the nature of the cross-examination of a jury, and we desire to express our concurrence in the view of the Bombay Government (*vide* paragraph 4 of their letter No. 5946,* dated the 23rd September 1893) that if the particular issue of fact on which a special verdict is desired is carefully reduced to writing, with a close regard to the definition of the offence charged, there is no danger of the jurors becoming confused.

* No. 8 in the list of enclosures to this Despatch.

4. In civil cases in India the functions of the jury and the Judge are combined in the presiding officer. The law† requires that officer, before he proceeds to a decision, to frame issues which set forth the conditions necessary to the establishment of the claim, and to record a separate finding on each issue. At present no such obligation is imposed in criminal cases. But in many criminal trials the questions regarding the offence committed are quite as complicated as they are in suits respecting a civil claim. The Code of Criminal Procedure (section 297) requires the Judge "to lay down the law by which the jury are to be guided" but great difficulty is often experienced by Sessions Judges in bringing the minds of the jury in contact with the various essential considerations on which in difficult cases depends a proper verdict as to the exact offence committed. In these circumstances it would, in our opinion, not only be a great assistance to the Judge, but also a great assistance to the jury themselves, in arriving at a decision, if, as the Bombay Government suggest, the Judge were to cause the material issues upon which a finding is required to be laid before the jury and were to require them to give a separate verdict upon each issue.

† Civil Procedure Code, section 146.

5. We are, therefore, of opinion that the judge should be allowed to require from the jury separate findings on any questions of fact which he may think material. The statement of these issues will in itself be calculated to assist the jury. Whether this can be more suitably done before the jury have delivered their general verdict or afterwards is a matter which we are disposed to leave to the Select Committee if a Bill is introduced; but as at present advised we think that it can be more suitably done before the general verdict is given as a general rule, though in particular cases and to clear up doubtful points it might doubtless be usefully done afterwards. It is however to be noticed that if after a jury have returned a general verdict they are required to bring in separate findings on subordinate points, there will be some difficulty in avoiding at least the appearance of cross-examination. We think that an amendment of section 303 could be drafted without difficulty, which would, on the one hand, admit questions on particular issues of fact material to a charge, and, on the other, exclude questions relating to the reasons for a decision or the credibility of particular evidence.

6. There is a very large consensus of opinion among the authorities consulted in favour of the general course which we recommend. It is supported by the Governments of Madras and Bombay, by most of the officers consulted in Bengal, by the High Court of the North-Western Provinces, and by the Lieutenant-Governor of the North-Western Provinces and Oudh. On the other hand, the members of the Jury Commission and the Judges of the Calcutta and Bombay High Courts are opposed to our proposal. We have given full consideration to the opinions expressed by these authorities, but we are unable to agree that the views which they put forward should be allowed to prevail. The Jury Commission, while reluctantly concluding that the proposed procedure would be liable to create greater evils than it would remedy, did not state the nature of the evils which they apprehended. The objection of the Judges of the Bombay High Court is, it appears to us, based upon a misapprehension of the proposed amendment which has led them to surmise that the jurors will virtually be called upon to give their reasons for their conclusion. It seems to us, however, that any possible danger of this nature could be obviated by such an amendment as is suggested in the last foregoing paragraph.

The Judges of the Calcutta High Court seem to have treated together the two proposals discussed in paragraphs 32 and 33 of the Report of the Commission; but, as we have already pointed out, these two proposals are entirely distinct. The Honourable Court think that to allow the Judge to state issues of fact for the finding of the jury "would furnish an additional ground for appeal from a conviction on the verdict of a jury" on the basis, substantially, of misdirection by the Judge. We are, however, disposed to conclude that, on the contrary, appeals on the ground of misdirection by the Judge would be likely to become rarer than at present, if it were the practice for Judges to break up a complicated charge into its elements and to ask the jury to come to a decision upon each of them separately. It would also, we think, be always evident if the issues were stated and separate findings taken upon them, whether an erroneous direction by the Judge had had any influence on the general verdict.

7. After carefully considering the replies of the Local Governments to our letters of the 6th May 1893, regarding the question of amending section 269 of the Criminal Procedure Code, we are of opinion that the law should be amended so as to require the previous sanction of the Governor General in Council when action is proposed to be taken under this section.

8. We now proceed to the proposals of the Jury Commission for amending the Criminal Procedure Code. These we have fully considered with reference to the replies received, and we shall now state our conclusions.

Paragraphs 24 to 26 of the Report.

(i) The Commission recommended that for the words "so completely that he considers it" in the first paragraph of section 307, the words "and is clearly of opinion that it is" should be substituted: and that the last paragraph of the section should provide that the High Court should consider the entire evidence in a referred case, and after giving due weight to the opinions of the Sessions Judge and jury should exercise the powers conferred by the paragraph. We think that the Commission's proposal may in substance be accepted, it being left to the Select Committee to decide on the exact wording of the amendments to be made in section 307.

Paragraph 34 of the Report.

(ii) While agreeing with the conclusion previously arrived at by the Government of India that it was not desirable to have Special Juries, in so far as these might tend to weaken Common Juries, the Commission considered that cases might arise in which it might be highly desirable, in the interests of justice as well as to satisfy public opinion, to employ a Special Jury. They suggested that this object could be attained without weakening the Common Juries, if out of the general list of jurors some of the more highly qualified persons were held to be Special Jurors and summoned when a Special Jury was required, remaining liable to be summoned with Common Jurors for ordinary cases. After further consideration, and examination of the diverse opinions received on this subject, we support the proposal of the Commission for the amendment of the law so as to enable the Local Government to put the suggested arrangements in force where it is found advisable to do so. The Local Government should, we think, have power to declare in which districts trials by Special Jury may be held, and the Sessions Judge should determine, on application made, whether or not a particular case should be tried by a Special Jury.

(iii) In paragraph 37 of their Report the Commission recommended that, as under the earlier Codes, the Local Government should be empowered to fix the area for which each jury list should be prepared, since the district, which is the prescribed area under section 319 of the present Code, is of varying extent, and facility of communication varies. Under the provisions contained in this section all persons between the prescribed ages are liable to serve as jurors at any trial within the district in which they reside. It would appear that in some Provinces there is a practice of exempting all persons dwelling beyond a certain distance from the Court. We think that it would be appropriate to add to the existing section some such words as the following :—

"or, if the Local Government, on consideration of local circumstances, have fixed any other area in this behalf within the area so fixed."

This would confer a power either to extend or to reduce the area.

(iv) In paragraph 38 the Commission recommended that Honorary Magistrates should, as such, be included in all lists of jurors. They also took exception to certain exemptions granted by the Bengal Government under clause (*k*) of section 320 of the Criminal Procedure Code and to the provisions of Section 10 of Act VIII of 1878, under which the Chief Customs authority or Chief Customs officer is exempted from liability to serve as a juror, and also has power to exempt any other officer of Customs on grounds of public duty.

Honorary Magistrates are "Judges" within the meaning of section 320 of the Criminal Procedure Code, and as such are, at present, exempt from liability to serve as jurors or assessors. On this point we would prefer to make no change, as we consider it on the whole advisable to maintain the exemption of Honorary Magistrates. The exemption of Customs officers appears to be necessary, and in regard to the exemptions under clause (*k*) of section 320, sufficient reason has not, we think, been established for interference with the discretion vested in the Local Government.

(v) On the question of allowing an appeal from the verdict of a jury, the Commission gave a somewhat uncertain judgment. While, however, they observed that opinion in England was inclined to an appeal, and remarked that high authority had recommended that an appeal should be allowed when the jury were not unanimous and the Judge dissented from the verdict, they held that the alterations which they had proposed in section 307 (*viz.*, that a Sessions Judge should refer the case to the High Court whenever he thought it clearly necessary, and that the High Court should consider the whole evidence) would sufficiently provide against failures of justice.

Paragraph 42 of the Report.

The Government of Madras regard it as essential to upholding the jury system, that "under no circumstances should an appeal upon the facts be permitted" from a verdict, and this is also the opinion of nearly all the authorities consulted by that Government. It is represented that the Judge and jury before whom the case proceeds have better opportunities of judging than the High Court, which only sees the record: and that if the Sessions Judge does not consider a reference necessary, it is highly improbable that the High Court could interfere with good effect in appeal. The Bombay Government invite attention to a suggestion that the opinion of a bare majority of jurors should not be accepted as a verdict, but that if a verdict is to be final, it should be a unanimous one, or that of a majority not less than three-fourths. We are not, however, prepared to consider this point at present. The Bengal Government understands the proposal to be only to allow an appeal by Government against acquittal, and does not advocate this. There is nothing material on the question under notice in the replies from the Government of the North-Western Provinces and Oudh, the Chief Commissioner of Assam and the Calcutta High Court. As the Jury Commission did not advocate the proposal to allow an appeal on the facts, and the only opinions which we have received are strongly against it, we do not think that the proposal need be further considered unless and until the alterations which we propose in sections 303 and 307 of the Criminal Procedure Code are found in practice to be insufficient to provide against failures of justice.

(vi) Section 367 of the Criminal Procedure Code provides that, in trials by jury, the Court need not write a judgment, but shall record the heads of the charge to the jury. The majority of the Jury Commission were of opinion that the suggestions which had been made for a *verbatim* record of the Sessions Judge's

Paragraph 43 of the Report.

charge to the jury were impracticable; but the point was nevertheless urged by the two native members of the Commission—Sir Romesh Chunder Mitter and Maharaja Sir Jotindra Mohan Tagore. Neither of them, however, thought it practicable to require the Judge himself to write out his charge; and Maharaja Sir Jotindra Mohan Tagore was doubtful about the plan, which Sir Romesh Chunder Mitter advocated, of attaching a short hand writer to the Sessions Court. It will be seen that the Madras Government also, who alone have thought it necessary to take up the matter, hold that it is impossible to require the Judge to record the charge *verbatim* with his own hand, and we are not prepared to press on Local Governments the suggestion that a short hand writer should be provided in each Sessions Court where jury trial is held, in order to record the charge. The present law requires that the Court shall record "the heads of the charge." There is no evidence that, under the practice thus prescribed the recorded heads differ from the charges delivered, and it seems clear from the papers before us that no general need is felt for any change in the existing law. It would, therefore, in our opinion, be best to leave the subject untouched.

9. Coming now to the question of the operation of the jury system as it at present exists in the Madras Presidency, it will be seen that the Government of Madras are against any extension of the list of offences triable by jury there, and concur with the Jury Commission that offences relating to marriage should not be made triable by jury. They consider, however, that attempts to commit, and abetments of, the offences* which are at present triable by jury in the Madras Presidency should also be made triable by jury. We should have been prepared to agree to the extension of the jury system to offences relating to marriage (Chapter XX, Indian Penal Code) had it been proposed by the Local Government; but as matters stand we accept the views of the Governor in Council and shall inform the Madras Government that we do so.

* Theft, robbery, receiving or concealing stolen property, house-trespass and breaking a closed receptacle.

10. The Government of Bombay are not now desirous to withdraw the privilege of jury trial in murder cases, where it has once been granted, but with a view to minimize such evils as arise from its exercise they propose that use should be made of the provisions of sections 277 to 279 of the Criminal Procedure Code, by challenging every juror who belongs to a class having a religious objection to the death sentence. They have also suggested that clause (*h*) of section 278 should be amended in such a way that discretion in allowing or disallowing the objection shall not rest with the Court. We are not prepared to support the proposed amendment, which would be contrary to section 279 of the Code.

The remaining suggestions of the Bombay Government are that in the districts of Surat, Thana and Belgaum, offences against the State and offences relating to the Army and Navy (Chapters VI and VII, Indian Penal Code) should be withdrawn from the cognizance of juries; and that as suggested in the Minute† of the Honourable Mr. Justice Fulton, dated 3rd January 1893, "Jury Districts" should be divided into two classes, in the first of which jury trials for all cases except those under Chapters VI and VII of the Penal Code should be allowed, while in the second, offences resulting in death should also be excluded.

† Submitted with the letter from the Government of Bombay, No. 614, dated the 27th January 1893, a copy of which was forwarded to the India Office with Despatch No. 9 (Judicial), dated 9th February 1893.

We consider it preferable not to take the action proposed by the Bombay Government, and we will, in view of our proposal that the law should in future require our sanction to action under section 269 of the Criminal Procedure Code, request the Governor in Council not to extend the jury system at present to the Sholapur District as proposed in paragraph 11 of the Bombay Government's letter ‡ of the 23rd September 1893.

‡ No. 8 in the list of enclosures.

11. It remains only to state the views of the Bengal Government on the subject of the extension of jury trial in that Province. The Jury Commission forbore, upon the information before them, to give an opinion on the question of extending the system in the districts in which it is now in force to offences which are not at present triable by jury. Sir Romesh Chunder Mitter suggested that offences not exclusively triable by Courts of Session should be triable by jury in those Courts, and both he and Maharaja Sir Jotindro Mohan Tagore thought that all offences tried in the Sessions Courts in jury districts might be made triable by jury, save those which the Local Government might specifically except. His

Honour the Lieutenant-Governor is in favour of making offences tried by the Sessions Court under Chapters XXI (Defamation) and XXII (Intimidation, Insult, and Annoyance), and also Chapter XX (Offences relating to Marriage) of the Indian Penal Code triable by jury in districts in which other offences are so triable. After carefully considering the question we are of opinion that matters should be allowed to remain as they are in Bengal for the present in respect of offences under Chapters XXI and XXII. We think, however, that offences under Chapter XX might be included in the list of offences triable by jury. In coming to this conclusion we have not failed to give weight to the contrary opinion expressed by the Jury Commission in regard to these offences, but we are not satisfied that the considerations urged in paragraph 29 of their report are of sufficient weight to justify us in overruling the opinion of the Local Government on this point.

The Jury Commission expressed no opinion upon the question of the extension of trial by jury in Bengal to districts in which it is not now in force. The subject is discussed in paragraphs 11 to 13 of the Bengal Government's letter* No. 1350-J., dated the 5th March 1894, and local opinion seems to be much divided about it. We are not entirely in agreement with the Lieutenant-Governor as to the districts to which extensions should be made, and it will be observed that his recommendation is made subject to the proviso that the amendments of sections 303 and 307 of the Criminal Procedure Code which we have proposed in this Despatch should be carried out. We prefer to postpone discussion of the question of extending the jury system to other districts in the Lower Provinces until after the proposed amendment of the law has been effected.

* No. 9 in the list of enclosures.

From J. P. HEWETT, Esq., C.I.E., Offg. Secretary to the Government of India, to the Chief Secretary to the Government of Madras,—No. 989, dated the 10th September 1894. No. 271.

I am directed to acknowledge the receipt of your letter, No. 1743 (Judicial), dated the 28th August 1893, communicating the views of the Madras Government, of the Honourable the Judges of the High Court, and of certain selected officers upon the various matters discussed in the report of the Commission appointed to consider certain questions connected with trial by jury in Bengal.

2. From paragraph 3 of your letter it is observed that His Excellency the Governor in Council is opposed to any extension of the list of offences at present triable by jury in the Madras Presidency, and concurs with the Jury Commission that offences relating to marriage should not be made triable by jury. The Government of India accept the views of His Excellency in Council regarding these matters.

3. I am also to convey the sanction of the Governor General in Council to the proposal contained in paragraph 11 of your letter to issue a notification declaring that attempts to commit and abetments of offences which are at present triable by jury in Madras shall also be triable by jury.

4. The question of making amendments in the Code of Criminal Procedure in connection with the Jury Commission's Report will be dealt with separately.

From L. M. THORNTON, Esq., Offg. Deputy Secretary to the Government of India, Home Dept., to the Secretary to the Government of Bombay, Judicial Department, No. 1020, dated the 17th September 1894. No 272.

I am directed to acknowledge the receipt of your letter No. 5946, dated the 23rd September 1893, communicating the views of the Government of Bombay, of the Honourable the Judges of the High Court, and of certain selected officers upon matters discussed in the Report of the Commission appointed to consider certain questions connected with trial by jury in Bengal.

2. With reference to paragraph 11 of your letter, I am to request that, with the permission of His Excellency the Governor in Council, the extension of the jury system to the Sholapur District may be deferred, pending the final settlement of the question of amending section 269 of the Criminal Procedure Code, so as to require the previous sanction of the Governor General in Council when it is proposed to take action under the section.

From the Right Honourable HENRY H. FOWLER, Her Majesty's Secretary of State for India, to His Excellency the Right Honourable the GOVERNOR GENERAL of India in Council,—No. 3 (Judicial), dated the 31st January 1895. No. 273.

I have considered in Council your Government's letter No. 37, dated the 21st August 1894, in which you discussed the several amendments of the law which had been proposed in

reference to the system of trial by jury in India. I accept generally the conclusions at which Your Excellency in Council has arrived, but there are a few points as to which I have to make some observations.

2. In paragraph 10 of your letter you discuss and reject a suggestion of the Bombay Government for the amendment of section 278, clause, (*h*). I do not regard this proposal as open to the remark that it is inconsistent with the provisions of section 279, but I agree that it should not be entertained at present. It seems probable that any Judge would hold it to be a "sufficient" objection to a juror in a capital case that he is strongly opposed on religious grounds to doing anything which might lead to a sentence of death.

3. In the concluding paragraph of the letter under reply you deal with the question of extending trial by jury in Bengal to districts in which it is not now in force. The Lieutenant-Governor has recommended such extension to six districts on the understanding that the proposed amendments of sections 303 and 307 of the Code of Criminal Procedure are to be carried out, and that juries in those districts are not to take cognizance of charges of riot or murder. Your Government appear to favour some such extension, but have postponed the discussion of the question until sections 303 and 307 have actually been amended. The reason stated is that you are not entirely in agreement with Sir Charles Elliott as to the districts to which the system should be extended, but it would seem that there must be some districts as to which your opinion coincides with his, and I request that the extension may be conceded to those districts without further delay.

4. I observe, however, that Sir Charles Elliott is anxious to make the extension in the case of each district experimental in the first instance, and subject to reconsideration year by year. There are obvious objections to the withdrawal of a privilege which has once been conceded, and it is inexpedient that the concession should be made to any district where it is not fairly certain of success.

5. The last point to which I wish to refer is the question of allowing an appeal from the verdict of a jury or a majority of the jury. I do not altogether approve of the doctrine that "under no circumstances should any appeal upon the facts be admitted" from the verdict even of a bare majority. There could not, in my opinion, be any reasonable objection to legislation which will merely serve to make the practice of the Courts of Session more conformable to that which obtains in the Presidency towns. Section 305 relates to the High Courts and requires that the jury shall be discharged with the object of holding a new trial, unless either the jury are unanimous or as many as two-thirds of them are of one opinion and the Judge agrees with them. It has occurred to me that a similar rule might well be enacted for Courts of Session in lieu of that contained in section 306, merely substituting for the new trial the remedy which is more appropriate to those Courts, namely, an appeal to the High Court. The unanimous verdict of a jury would then continue to be conclusive upon the facts, subject to the provisions of section 307 as amended—but the verdict of a majority would be subject to appeal, unless such majority included at least two-thirds of the entire jury, and their opinions were expressly concurred in by the presiding Judge.

6. I shall be glad if Your Excellency will take this suggestion into consideration in Council. I am not disposed to overrule your decision that an appeal should not be allowed until there has been time to test the effect of the amendment of section 303 and 307 in providing against failures of justice but if the suggestion which I have made commends itself to your Government, I shall have no objection to its being incorporated in the Bill which you are about to bring forward.

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274. From J. P. Hewett, Esq., C.I.E., Officiating Secretary to the Government of India, to the Chief Secretary to the Government of Madras, the Secretary to the Government of the North-Western Provinces and Oudh, Judicial Department, the Chief Commissioner of Assam,—Nos. 919-921, the 17th June 1895.

In continuation of *   , I am directed to forward, for the / your information of the Governor in Council / His Honour the Lieutenant-Governor (and Chief Commissioner) copies of the Despatches† to and from Her Majesty's Secretary of State noted in the margin on the subject of the several amendments of the law which had been proposed in reference to the system of trial by jury in India.

* *Madras—my letter No. 989, dated the 10th September 1894.*
North-Western Provinces and Oudh—the correspondence ending with your letter No. 2664, dated the 20th September 1893.
Assam—the correspondence ending with Mr. Daukes' letter No. $\frac{88 \text{ L. L.}}{7331}$ J., dated the 9th September 1893.

† Despatch to the Secretary of State, No. 37 (Judicial), dated the 21st August 1894.
Despatch from the Secretary of State, No. 3 (Judicial), dated the 31st January 1895.

2. The legislation necessary in order to give effect to the proposals approved by the Secretary of State will be undertaken in the Council of the Governor General for making

Laws and Regulations. The Governor General in Council does not, for the present, propose to enact an amendment of the law to provide an appeal against the verdict of a jury on a matter of fact.

From J. P. HEWETT, Esq., C. I. E., Officiating Secretary to the Government of India, to the Secretary to the Government of Bombay, Judicial Department,—No. 922, dated the 17th June 1895.

Despatch to the Secretary of State, No. 37 (Judicial), dated the 21st August 1894.
Despatch from the Secretary of State No. 3 (Judicial), dated the 31st January 1895.

In continuation of the letter from this Department, No. 1020, dated the 17th September 1894, I am directed to forward, for the information of the Governor in Council, a copy of correspondence with Her Majesty's Secretary of State on the subject of the several amendments of the law which have been proposed in reference to the system of trial by jury in India.

2. The legislation necessary in order to give effect to the proposals approved by the Secretary of State will be undertaken in the Council of the Governor General for making Laws and Regulations. The Governor General in Council does not, for the present, propose to enact an amendment of the law to provide an appeal against the verdict of a jury on a matter of fact.

3. With reference to paragraph 8 of Mr. Whitworth's letter No. 5946, dated the 23rd September 1893, in which it was suggested that, in order to render it impossible for men, to whom the taking of life was repugnant, to serve on juries in murder cases, section 278 (*h*) of the Code of Criminal Procedure should be amended in such a way that the discretion in allowing or disallowing an objection by the prosecution should not rest with the Court, I am to invite attention to paragraph 2 of the present Despatch from Her Majesty's Secretary of State. It will be seen that the Secretary of State holds it to be probable that any Judge would accept an objection to a juror on the grounds indicated, if raised by the prosecution under the law as it at present stands. In view of this probability the Governor General in Council does not propose to modify section 278 (*h*) of the Criminal Procedure Code in the manner suggested.

From J. P. HEWETT, Esq., C.I.E., Offg. Secretary to the Government of India, to the Chief Secretary to the Government of Bengal,—No. 923, dated the 17th June 1895.

Despatch to the Secretary of State, No. 37 (Judicial), dated the 21st August 1894.
Despatch from the Secretary of State, No. 3 (Judicial), dated the 31st January 1897.

In continuation of the correspondence ending with your letter No. 1350-J., dated the 5th March 1894, I am directed to forward, for the information of His Honour the Lieutenant-Governor, copies of the Despatches to and from Her Majesty's Secretary of State noted in the margin on the subject of the several amendments of the law which had been proposed in reference to the system of trial by jury in India.

2. The legislation necessary in order to give effect to the proposals approved by the Secretary of State will be undertaken in the Council of the Governor General for making Laws and Regulations. The Governor General in Council does not, for the present, propose to enact an amendment of the law to provide an appeal against the verdict of a jury on a matter of fact.

3. In paragraph 3 of his Despatch the Secretary of State discusses the question of extending trial by jury in Bengal to districts in which it is not now in force. In paragraph 13 of your letter of the 5th March 1894 it is stated that His Honour the Lieutenant-Governor was prepared to recommend as a tentative measure the extension of the system to Chittagong, Mymensing, Rajshahi, Jessore, Midnapur and Bhagalpur, subject to the conditions (1) that the alterations suggested in sections 303 and 307 of the Criminal Procedure Code were carried into effect, and (2) that riot and murder cases were not made over to juries. In regard to this question, I am to state that the Government of India adhere to the opinion expressed in the second sub-paragraph of paragraph 11 of their Despatch of the 21st August 1894, and which His Honour the Lieutenant-Governor also shares, that the extension of the jury system to districts in the Lower Provinces, other than those in which it is now in force, should be deferred till sections 303 and 307 of the Criminal Procedure Code had been altered in the manner indicated in paragraphs 5 and 8 (i) of that Despatch respectively. I am at the same time to invite the attention of His Honour the Lieutenant-Governor to the remarks made by the Secretary of State in paragraph 4 of his Despatch, and to say that the Governor General in Council entirely concurs in the view that it is inexpedient to withdraw the concession of trial by jury when it has once been granted, and that for this reason every care should be

taken to extend the system only to districts in which there is a fair certainty of its being successful. In asking His Honour to be so good as to favour the Government of India with a further expression of his opinion as to the districts to which it should be extended when the law is amended, I am to intimate that, as at present advised, His Excellency in Council is disposed to think that the prevalence of agrarian disputes between landlord and tenant in Mymensingh and Jessore, may render it undesirable to extend it to those districts. I am to remark that the opinion of the Calcutta High Court has also been invited on the subject.

4. In conclusion I am to request, with reference to the first sub-paragraph of paragraph 11 of the Despatch of 21st August 1894, that cases under Chapter XX (offences relating to marriage) of the Indian Penal Code may be included in the list of offences triable by jury in all districts in which the system is at present in force.

No. 277. From J. P. Hewett, Esq., C.I.E., Offg. Secretary to the Government of India, to the Registrar of the High Court of Judicature at Fort William in Bengal, Appellate Side,—No. 924, dated the 17th June 1895.

In continuation of the correspondence ending with Mr. Carnduff's letter No. 2554, dated the 18th July 1893, I am directed to forward, for the information of the Honourable the Chief Justice and Judges of the High Court, copies of the Despatches to and from the Secretary of State noted in the margin on the subject of the several amendments of the law which have been proposed in reference to the system of trial by jury in India.

Despatch to the Secretary of State No. 37 (Judicial), dated the 21st August 1894.
Despatch from the Secretary of State No. 3 (Judicial), dated the 31st January 1895.

2. The legislation necessary to give effect to the proposals approved by the Secretary of State will be undertaken in the Council of the Governor General for making Laws and Regulations. The Governor General in Council does not, for the present, propose to enact an amendment of the law to provide an appeal against the verdict of a jury on a matter of fact.

3. I am also to forward the enclosed copy of correspondence* with the Government of Bengal, and with reference to paragraph 3 of the letter to that Government of this date, to say that the Governor General in Council will be glad if the Honourable Judges will favour the Government of India with an expression of their opinion as to the districts in the Lower Provinces, other than those in which it is now in force, to which the system of trial by jury should be extended when the amendments contemplated in sections 303 and 307 of the Criminal Procedure Code have been carried into effect.

* Letter from the Government of Bengal No. 1350 J., dated the 5th March 1894.
Letter to the Government of Bengal No. 923, dated the 17th June 1895.

No. 278. Office memorandum from J. P. Hewett, Esq., C. I. E., Offg, Secretary to the Government of India, to the Legislative Department,—No. 925, dated the 17th June 1895.

In continuation of office memorandum No. 1110, dated the 25th August 1892, the undersigned is directed to forward copies of the papers, entered in the enclosed list, on the subject of certain proposals for the amendment of the Code of Criminal Procedure in reference to the system of trial by jury in Courts of Sessions in India, which were submitted to Her Majesty's Secretary of State in Judicial Despatch No. 37, dated the 21st August 1894, and which have now been approved by him. It has accordingly been decided that the following amendments should be made in the law:—

(1) In view of the difficulty now experienced by Sessions Judges in bringing the minds of the jury in contact with the various essential considerations on which in difficult cases depends a proper verdict as to the exact offence committed, section 303 of the Criminal Procedure Code should, in modification of the instructions contained in the office memorandum of the 25th August 1892, be amended so as to enable the Judge to require from the jury separate findings on any questions of fact which he may think material, either before or after, or in particular cases both before and after, verdict. The amendment should be so framed as on the one hand to admit questions on particular issues of fact material to a charge, and, on the other, to exclude questions relating to the reasons for a decision or the credibility of particular evidence.

(2) Section 269 should be amended so as to require the previous sanction of the Governor General in Council when action is proposed to be taken under the section extending or restricting the system of trial by jury.

(3) The next proposal relates to section 307 of the Code. With a view to defining in more clear language than is contained in the section, as it stands at present, the

duties of Sessions Judges and of the High Court in cases in which the Judge disagrees with the verdict of the jury, the Commission appointed to consider the system of trial by jury in Bengal recommended that for the words "so completely that he considers it" in the first paragraph of the section, the words "and is clearly of opinion that it is" should be substituted; and that the last paragraph of the section should provide that the High Court should consider the entire evidence in a referred case, and after giving due weight to the opinions of the Sessions Judge and jury, should exercise the powers conferred by the last paragraph. The Commission's proposal should in substance be adopted.

(4) Effect should be given to the recommendation contained in paragraph 34 of the Commission's report to the effect that out of the general list of jurors some of the more highly qualified persons should be held to be special jurors and summoned when a special jury is required in the interests of justice; such persons continuing to be liable also to be summoned with common jurors for ordinary cases. Provision should at the same time be made empowering (*a*) the Local Government to declare in which districts trials by special jury may be held and (*b*) the Sessions Judge to determine, on application made, whether or not a particular case should be tried by a special jury.

(5) With reference to the recommendation made in paragraph 37 of the report it has been decided that power should be conferred on Local Governments enabling them, where necessary, to convene a jury from an area other than the "district in which they reside." To effect this, section 319 of the Criminal Procedure Code should be amended by the addition of words to the following effect:—

"or, if the Local Government on consideration of local circumstances have fixed any other area in this behalf, within the area so fixed."

2. The undersigned is to request that the necessary steps may be taken in the Legislative Department for giving effect to the above proposals.

From T. W. Richardson, Esq., Registrar of the High Court of Judicature at Fort William in Bengal, to the Secretary to the Government of India,—No. 287, dated the 22nd January 1896. No. 279.

I am directed to acknowledge the receipt of your letter No. 924, dated the 17th June 1895, in which the Honourable Judges are requested to favour the Government of India with an expression of their opinion as to the districts in the Lower Provinces, other than those in which it is now in force, to which the system of trial by jury should be extended, when the amendments contemplated in sections 303 and 307 of the Criminal Procedure Code have been carried into effect.

2. In reply I am to say that the Judges are not prepared to express an opinion on the subject until they know what shape the proposed legislation will finally take.

From T. W. Richardson, Esq., Registrar of the High Court of Judicature at Fort William in Bengal, to the Secretary to the Government of India,—No. 2720, dated the 14th August 1896. No. 280.

In continuation of my letter No. 287, dated the 22nd January 1896, I am directed to forward, for the information of His Excellency the Governor General in Council, a copy of a letter No. 2719, dated the 14th instant, together with copies of its enclosures, regarding the districts in the Lower Provinces to which the system of trial by jury should be extended, and the manner in which it should be extended to them.

From T. W. Richardson, Esq., Registrar of the High Court of Judicature at Fort William in Bengal, to the Chief Secretary to the Government of Bengal,—No. 2719, dated the 14th August 1896. No. 281.

I am directed to acknowledge the receipt of your letter No. 3502-J., dated the 17th June last, in which the opinion of the Judges is requested in regard to the districts to which the jury system should be extended, and the manner in which it should be extended to them.

2. In reply I am to say that on receipt of your letter the Sessions Judges of the six districts mentioned in paragraph 2 of Mr. Cotton's letter No. 482-J., dated the 27th January 1896, were consulted, and I am to forward copies of the replies received. The letter addressed by the Court to Mr. Staley, Sessions Judge of Rajshahi, failed to reach that officer before he left the district on leave.

3. It will be observed that the Sessions Judges of Mymensingh, Jessore, Midnapore, and Bhagulpore are opposed to the extension of the jury system to their districts. On the understanding, however, that it has been finally decided that the system should be extended

to districts other than those in which it is now in force, the Judges will raise no objection to its extension to Chittagong, Mymensingh, Rajshahi, Jessore and Bhagulpore. In regard to Midnapore, the Judges doubt whether the number of competent jurors in that district is sufficient to deal with the business coming before the Court of Session, and they are therefore unable to approve of the system being extended to that district.

4. The Judges are of opinion that if the jury system be extended to any district the concession should be made in the same terms and include the same classes of cases as in the districts where the system is already in force.

No. 282. From R. H. ANDERSON, Esq., Sessions by Judge of Mymensngh, to the Registrar of the High Court of Judicature at Fort William in Bengal,—No. 853—XII-7, dated the 7th July 1896.

In reply to your No. 2085-A., dated the 18th ultimo, I have the honour to state that in my opinion it is not advisable to introduce the jury system into this district.

In my annual report I mentioned that I had experienced much difficulty in securing the attendance of even two assessors regularly. The wealthier individuals who were summoned resorted to all sorts of excuses and evidently thought it derogatory to sit. It was only owing to the courtesy of the Bar that the work did not frequently suffer from postponements. For this reason I approved the District Magistrate's proposal at the end of last year to bring on the list a number of persons of somewhat inferior social status to those who had previously been borne on it, but still of presumably fair education and intelligence. The result does not seem to me to have been altogether satisfactory. I cannot say I have usually had the same assistance in cases as before, or felt the same confidence always in the assessors. It will readily be seen, then, that it would not be easy to secure sound, reliable juries of five persons. It would not do to have juries of inferior material; the Bar could not possibly stand the continual calls that would be made on it.

Another reason which weighs with me against the introduction of the system is this: my experience has shown me that in a jury district the Judge has not unfrequently to sit late to finish cases quickly, partly to save the jurors as much as possible from inconvenience, and partly to reduce the risk of one at least falling ill or absenting himself on some excuse or other and so causing a re-trial. This may be done in ordinary districts where there is usually a considerable interval between each sessions; but it would, I believe, break down any Judge in this district, for it would be an almost daily occurrence and all the year round.

No. 283. From W. TENNON, Esq., District and Sessions Judge of Jessore, to the Registrar of the High Court of Judicature at Fort William in Bengal,—No. 1106 S., dated the 26th June 1896.

With reference to your letter No. 2085-C., dated the 18th instant, I have the honour to state that I am not of opinion that the jury system should be extended to the Jessore district.

No. 284. From H. R. H. COX, Esq., Sessions Judge of Midnapore, to the Registrar of the High Court of Judicature at Fort William in Bengal,—No. 346, dated the 25th June 1896.

In reply to your letter No. 2085-D of the 18th instant, I have the honour to say that at present it will be difficult to work the jury system in this district. The district is regarded as a backward one. Unfortunately the provincial reports on public instruction do not compare the conditions of the different districts one by one. I am therefore not able to quote any statistics in support of the belief that Midnapore is backward beyond the fact that less than 5 per cent. of the boys of a school-going age here obtain secondary education whereas in all the jury districts but Patna this portion is exceeded, and in Patna the educational advantages of the town probably counterbalance the deficiencies of the district (*vide* page 38 of the Provincial Report on Public Instruction for 1894-95.

While I have been here there have been on an average seven cases in each sessions in which prisoners have pleaded to the charges and the services of assessors have been required. This gives 42 cases a year. Section 330 A of the Code as amended apparently contemplates that jurors should be summoned to attend more than once a year, but this, in my opinion, will be considerable hardship to them. If each juror sits once a year I should require 210 jurors at least without making any allowance for casualties. At present the list of assessors contains only 184 names, and, though many of these persons are fit to serve as jurors there is a certain proportion who, in my opinion, are not up to the required standard. Thus, though I am not in the least degree an enemy of the jury system, I think it would be as well to wait for a few years yet before extending it to Midnapore. The delay

need not be for long. I doubt not that when we have railway communication with Calcutta, which may be expected in two years' time, the educational standard of the district will rapidly improve, especially in the town and vicinity from which the jurors are principally drawn. But I cannot honestly say that I think the extension of the system to Midnapore at present likely to add to its credit.

From C. M. W. BRETT, Esq., Sessions Judge of Bhagulpore, to the Registrar of the High Court of Judicature at Fort William in Bengal, No.—693-S., dated the 4th June 1896. No. 285.

In reply to your letter No. 2085-E., dated the 18th instant, I have the honour to refer you to the remarks made in paragraph 6 of my report on the administration of criminal justice in this Sessions Division in 1895, copy of which is attached, and to say that I do not think the system of trial by jury should be extended to this Sessions Division.

Out of 228 assessors on the list for the District of Bhagulpore, 22 are Bengalis, 34 Marwaris and 172 Beharis; and in the District of Monghyr, out of 399 assessors 17 are Christians, 30 Bengalis, 10 Marwaris, and 342 Beharis. The greater number of Bengalis are pleaders and these gentlemen being experts in law have not, so far as my experience goes, proved themselves satisfactory jurors or assessors. The senior pleaders find service as assessors very onerous, and when summoned generally beg to be excused from service. The junior pleaders cannot forget that sitting as assessors or jurors they should as far as possible lay aside their own ideas of the law. The Marwaris are very unwilling to serve as assessors and are of very little use when ordered to serve. They either cannot or will not without very great hesitation express an opinion when required to do so, and not unfrequently remark that they only know how to sell clothes, not to try cases. As jurors they would be very little, if of any, use.

The assessors who are natives of the two districts have, with few exceptions, shown themselves wanting in independence and intelligence, and I have on several occasions, when asking such gentlemen sitting as assessors for their opinion, been met with the reply that they will agree with whatever may be the opinion of the Court. Out of such material it seems hardly probable that useful jurors will be found.

Among the assessors for Bhagulpore 43 know English, and among those for Monghyr 60. I do not think that out of the assessors on the lists of the two districts a satisfactory special jury list could be formed. In fact, in cases in which it has seemed desirable to select special assessors, I have had to fall back on the professional or salaried classes.

For these reasons I think that at present this division is not fit for the introduction of the system of trial by jury, and I am unable to recommend the extension of the system to the division.

Paragraph 6 of the Annual Criminal Report of Bhagulpore Division for 1895.

I regret that I am unable to express a high opinion of the assistance rendered to the Court by the assessors. In many instances it was difficult to obtain from them a definite expression of their opinion, and in others they displayed a want of capacity to weigh the evidence. Not unfrequently they expressed their concurrence with whatever might be the opinion of the Court, and some, especially Marwari assessors declared at first their inability to give any opinion at all. In several instances, however, the assessors, listened patiently and carefully to the evidence and gave well-considered opinions. I may add that I do not think that at present this is a division to which it would be either possible or desirable to extend the system of trial by jury.

From C. P. CASPERSZ, Esq., Sessions Judge of Chittagong, to the Registrar of the High Court of Judicature at Fort William in Bengal,—No. 234-S., dated June 1896. No. 286.

I have the honour to acknowledge the receipt of your letter No. 2085, dated the 18th instant, on the subject of extending the jury system to this district.

2. I think the jury system may be extended to the district of Chittagong. My views on the subject are embodied in a report submitted to Government three years ago. A copy of certain passages in that report are annexed hereto. No change need be made for the current year 1896.

Extract from a report submitted to Government, No. 2958, dated the 27th June 1893.

* * * * *

6. *Accommodation of Jurors. Seclusion of Jurors.*—I can only endorse the remarks of the Jury Commission. There is no room except the private room of the Sessions Judge, or possibly that of the Subordinate Judge (2nd Court), where the jury could retire to consider their verdict, and it would be impossible to lock them up during a trial lasting more than one day,

Apart from questions of custom and caste, the absence of any extra accommodation puts the matter beyond the limits of serious consideration. I believe the Bombay High Court have framed some rules under section 296, Code of Criminal Procedure (*Bombay Gazette*, 1875, page 653), but I am unable to refer to them. It may be added that my office-room consists of one large chamber where all the Amlahs, including 26 copyists, sit.

* * * * *

8. *Extension of the system of trial by Jury to (a) certain classes of offences, and to (b) the District of Chittagong.*—I would respectfully advocate the extension of the system to *all trials* before a Court of Session, except trials of offences under Chapters VI (offences against the State), VII (offences relating to the Army and Navy), VIII (offences against the Public Tranquillity), IX (offences by or relating to Public servants). Of these, Chapters VI and VII call for no comment. I would exclude Chapter VIII because riot cases are most difficult to decide, and I believe jurors are apt to become bewildered with the details of what each accused is alleged to have done or said at different times. All cases of riot whether involving murder, culpable homicide, or hurt of any kind, can be most suitably decided by the Sessions Judge without a jury. The State is peculiarly interested in the maintenance of the public peace, and offences against that peace should be reserved for the servants of the State. By a parity of reasoning, offences falling under Chapter IV of the Indian Penal Code (as for instance, where an unpopular police officer is concerned), are not suitable for trial by jury. The local Bar favour an extension of the present system with the addition of the offence of defamation.

* * * * *

10. A small jury—3 persons ordinarily, and 5 or 7 persons for a special jury—would appear to be readily obtainable in this district. During 1892, 30 cases could have been tried by jury, but several of these affected the same accused person. There are 306 assessors on the revised list, not including Honorary Magistrates and excluding office Amlah of the various departments whose names were expunged at the last revision.

11. In conclusion, I venture to state my belief that the difference between trials with the aid of assessors and trials by small juries (subject to the alteration of section 307, Criminal Procedure Code) will be hardly perceptible in the results arrived at. The experiment is well worth trying after 30 years' experience of the system hitherto prevailing.

No. 287. From C. W. Bolton, Esq., Officiating Chief Secretary to the Government of Bengal, to the Secretary to the Government of India,—No. 250-J.—D., dated the 30th September 1896.

I am directed to reply to your letter No. 923, dated the 17th June 1895. In paragraph 3 of that letter it was stated that the Government of India adhered to the opinion expressed in the second sub-paragraph of paragraph 11 of their despatch of the 21st August 1894 to the Secretary of State, which Sir Charles Elliott also shared, that the extension of the jury system to districts in the Lower Provinces, other than those in which it is now in force, should be deferred till sections 303 and 307 of the Criminal Procedure Code had been altered in the manner indicated in paragraphs 5 and 8 (1) of that despatch respectively. At the same time the Governor General in Council expressed his concurrence in the Secretary of State's view that it is inexpedient to withdraw the concession of trial by jury when it has once been granted, and it was observed that for this reason every care should be taken to extend the system only to districts in which there is a fair certainty of its being successful. Sir Charles Elliott was requested to favour the Government of India with a further expression of his opinion as to the districts to which it should be extended when the law is amended, and it was intimated that, as then advised, His Excellency in Council was disposed to think that the prevalence of agrarian disputes between landlord and tenant in Mymensingh and Jessore might render it undesirable to extend it to those districts. This Government was also informed that the opinion of the Calcutta High Court had been invited on the subject. As the Government of India are aware, the Judges intimated that they were not prepared to express an opinion until they knew what shape the proposed legislation would finally take. They were subsequently addressed by this Government, and, the proposed legislation having since been carried out, they have now favoured the Lieutenant-Governor with their opinion in their Registrar's letter No. 2719, dated the 14th ultimo, a copy of which is herewith submitted with its enclosures, and His Honour is at length in a position to comply with the request of the Government of India.

2. The changes in the Criminal Procedure Code have been enacted by Act XIII of 1896. The alteration in section 303, which the Government of India desired, namely, that the Judge might be empowered to put to the jury questions on particular issues of fact material to the

charge, without questioning them as to the reasons for their decision or for believing or disbelieving particular evidence, has not been made, but the proposed amendments in section 307 have been effected. The other modifications of the law which were favoured by the Government of India are embodied in the Act, among them being a provision for the trial of offences, in certain cases, by special jury. The Lieutenant-Governor presumes that the fact that section 303 of the Criminal Procedure Code has not been amended will not now be held to be a bar to the extension of the jury system to districts other than those in which it already prevails. It is also observed that the Government of India expressed no opinion on the condition which Sir Charles Elliott desired to apply to such extensions, that is, that rioting and murder cases should not be made over to the jury in the new districts; and for the reason stated below, the Lieutenant-Governor does not consider that that condition can be adhered to. His Honour has thought it desirable to obtain the opinion of the High Court as to the method of selecting special jurors and the classes of cases to be tried by them, and as to the exclusion of legal practitioners from the jury list, and a copy of the correspondence * is submitted for the information of the Government of India. The recommendations of the Judges will be noted below.

* To High Court, No. 60J. T., dated 6th August 1896.
From High Court, No. 2957, dated 7th September 1894.

3. On receipt of your letter, dated 17th June 1895, the Commissioners of the Dacca and the Presidency Divisions were requested to report on the question whether the prevalence of agrarian disputes between landlord and tenant in the districts of Mymensingh and Jessore, respectively, rendered it inadvisable to extend the jury system to them, and the opinion of the Judges was also subsequently invited on the point. The Commissioner of Dacca pointed out in his report that the great prevalence of agrarian disputes leading to riots is common to the districts of Eastern Bengal and the neighbouring district of Sylhet in Assam, and that a large proportion of such disputes are not between landlord and tenant, but between tenants and submitted a comparative statement of true cases in the districts of Dacca, Mymensingh, Faridpur, Backergunge and Sylhet, a copy of which is annexed, from which it appears that, while the average annual number of cases was larger in Mymensingh than in the other Bengal districts, the proportion of cases to population was smallest in that district. In Sylhet both the figures were far in excess of those for all the Bengal districts. Mr. Luttman-Johnson sees in the existence of agrarian disputes no reason for not extending the jury system to Mymensingh. The Commissioner of the Presidency Division considered it undesirable to extend the system to Jessore. The Magistrate of Jessore reported that, though the district is fairly quiet at present, agrarian disturbances may at any time break out in one sub-division owing to indigo cultivation, and that parts of another subdivision were also liable to such disputes.

4. The Judges, it will be observed, say that, on the understanding that it has been decided to extend the jury system to districts other than those in which it is now in force, they will raise no objection to its extension to both Mymensingh and Jessore as well as the districts of Chittagong, Rajshahi, and Bhagulpore. The Lieutenant-Governor agrees with the Commissioner of Dacca that the existence of agrarian disputes in Mymensingh does not constitute a sufficient cause for not introducing trial by jury into that district. The system has been long in opertion in the district of Dacca, and the conditions there are similar to those of Mymensingh. It has also been rightly pointed out that a considerable proportion of the rioting cases arise out of disputes between tenants, and not between landlords and tenants. This is doubtless the case also in Jessore, and the Lieutenant-Governor concurs in the opinion of the High Court that the jury system may be extended to that district. The Lieutenant Governor is satisfied that both in Jessore and Mymensingh, as well as in Rajshahi, there would be no difficulty in securing a competent jury. The Judges do not recommend the extension of the system to Midnapore, on the ground that there is a doubt whether the number of competent jurors in that district is sufficient to deal with the business of the Court of Sessions. In view of this doubt the Lieutenant-Governor does not desire to press the recommendation previously made for the inclusion of Midnapore among the districts to which the jury system should now be extended. Sir A. Mackenzie is also of opinion, in view of the facts stated in the letter from the Sessions Judge of Bhagulpore, enclosed in the communication from the High Court of the 14th August, that the extension of jury trial to the district of Bhagulpore is not at present desirable. It was assumed in paragraph 13 of Mr. Cotton's letter of the 5th March 1894, that extension to Bhagulpore involved extension also to Monghyr. For sessions purposes Monghyr and Bhagulpore are, however, distinct jurisdictions, though under one Judge. The High Court has evidently not considered the question of extending the jury system to Monghyr, and Mr. Brett shows that its extension to Bhagulpore alone is open to objection. The remaining districts are Chittagong, Mymensingh, Rajshahi and Jessore, and, with the

approval of the Government of India, His Honour would issue the requisite notification for the extension of the system to those districts, under section 269 of the Criminal Procedure Code. He proposes also to inform the High Court that he will be ready to consider the question of extension to other districts when and where the Court considers this desirable. In the Lieutenant-Governor's opinion, the difficulty in the way of a wide extension of the jury system is not so much the want of competent jurors as the want of competent and experienced Judges. His Honour will endeavour to post only the more senior Judges to the jury districts, but this is not always feasible ; and the exigencies of the service bring down the appointment of Sessions Judge now-a-days to officers of very junior standing.

5. The High Court is of opinion that if the jury system be extended to any district, the concession should be made on the same terms and include the same classes of cases as in the districts where the system is already in force. In this view the Lieutenant-Governor entirely agrees. It would be invidious, in His Honour's opinion, to exclude from the cognizance of the juries in the new districts cases which are now tried by juries elsewhere. The suggestion that rioting and murder cases should not be made triable by jury in these districts has, moreover, lost much of its force since provision has been made for the empannelling of special juries under Act XIII of 1896. With due care in the selection of special jurors it may be anticipated that the more serious cases will be brought before a class of jurors ordinarily superior to those now selected from the whole body on the jury list. In their Registrar's letter No. 2957 of the 7th instant, the High Court have accepted the Lieutenant-Governor's proposal that offences punishable with death should, and at the discretion of the Sessions Judge, other offences may, be tried with special juries, and have also agreed that special jurors should be selected by the Judge and the Collector jointly out of the ordinary jury list, the number not to exceed 20 per cent. of the total on the list. Subject to these conditions as to the selection of special jurors and the classes of cases to be tried with their help, His Honour would place all jury districts on the same footing.

6. In connection with the question of extending and improving the jury system, it has been pressed upon the Lieutenant-Governor by many competent authorities that it is most desirable to exempt legal practitioners of all descriptions from the obligation of serving upon juries. Even as assessors who are not bound by the Code to take their law from the Judge, they have, in the opinion of several experienced Judges, as expressed to the Lieutenant-Governor, not proved satisfactory, setting up very frequently their own view of the law in opposition to that of the Judge. On juries the tendency of this class of juror to act thus in spite of the direct provision of section 297 of the Criminal Procedure Code will probably account for not a few of the cases in which verdicts are brought in contrary to the direction and summing up of the Judge. All that is required in a juror is sufficient education and intelligence to appreciate and form an opinion on facts. The less he is of a legal specialist the better. In England legal practitioners are not called to serve on juries. In Madras it has been ruled that pleaders and muktears should not be included in the Collector's list of persons qualified to serve if a sufficient number of other persons is available; and advocates, vakils and attorneys of the Madras High Court are specially exempted from service. Barristers practising in the interior of Bengal have already been exempted by this Government. The Lieutenant-Governor, therefore, in my letter of the 6th August, consulted the High Court as to whether legal practitioners generally should not be exempted from service on juries in Bengal. The Court in reply agrees that theoretically such persons should be excluded from the jury list, but expresses a doubt whether if this were done there would be a sufficient number of competent jurors left. This, however, is a point on which the Government has full information, annual reports being now made to it of the results of each revision of jury lists. The latest information on the subject is embodied in the following table:—

Names of jury district.	Total number of jurors.	Number of legal practitioners in foregoing column.	Difference.
Nadia	436	64	372
Dacca	674	148	526
Burdwan	462	148	314
Patna	517	82	435
Murshidabad	392	98	294
24-Parganas	1,742	316	1,426
Hooghly	1,295	211	1,084
Howrah	438	48	390

Under the orders of this Government much trouble has been taken of late years to revise the jury lists, and there can be no doubt that the figures in the last column of the foregoing statement represent an adequate number of competent jurors for the districts in question. Nor can there be any reasonable doubt that those numbers could be expanded, if necessary, and if it is found that the exemption of legal practitioners leaves any deficit. There is also no ground for supposing that in the districts to which it is now proposed to extend the system there will be any great difficulty in framing a list of competent jurors on similar lines. Unless, therefore, the Government of India see strong reason to the contrary, the Lieutenant-Governor proposes, in the exercise of the discretion vested in him by section 320 (K) of the Criminal Procedure Code, to exempt from liability to serve as jurors or assessors, "all legal practitioners."

From C. W. Bolton, Esq., Officiating Chief Secretary to the Government of Bengal, to the Registrar of the High Court,—No. 60 J.—T., dated the 6th August 1896. No. 285.

In continuation of my letter No. 3502-J., dated the 17th June 1896, I am directed to invite attention to section 1 (2) of Act XIII of 1896, and to request that the Honourable Judges may be moved to favour the Lieutenant-Governor with an expression of their opinion as to the offences which may be reserved for trial by special juries.

2. I am at the same time to forward, for the Court's consideration, the accompanying extract (paragraph 6) from a letter* to the address of the Government of India, in which it was proposed by this Government to retain one jury list as at present, and to authorize the Judge and Collector jointly to select a certain number of special jurors not to exceed 20 per cent., and then to declare, as in the case of the High Court, that all offences punishable with death, and all other cases which the Sessions Judge in his discretion might determine, should be tried by a special jury.

* No. 1350 J., dated the 5th March 1894.

3. I am further to state that the Lieutenant-Governor is very strongly of opinion that legal practitioners should not serve on juries in this country any more than in England, and would be glad to have the Court's views on this point also. I am to add that Barristers practising in the mufassal have, under a notification issued by this Government in 1888, been already exempted from such service.

From T. W. Richardson, Esq., Registrar of the High Court of Judicature at Fort William in Bengal, to the Chief Secretary to the Government of Bengal,—No. 2957, dated the 7th September 1896. No. 286.

I am directed to acknowledge the receipt of your letter No. 60 J.—T., dated the 6th August 1896, and enclosure, in which the opinion of the Judges is requested in regard to certain points in connection with special juries.

2. In reply I am to say that in regard to the offences to be reserved for trial by special juries, the Judges accept the proposal of His Honour the Lieutenant-Governor that special jurors should be chosen—

(*a*) if the accused person is charged with having committed an offence punishable with death,

(*b*) if in any other case a Sessions Judge so directs.

3. The Judges also agree that one jury list should be retained, the special jurors being selected in the manner proposed by the Government of Bengal.

4. In regard to the question whether legal practitioners should serve as jurors, the Judges agree with His Honour that in theory such persons should be excluded from the jury list. They apprehend, however, that if this were done, there would be a danger that the system of trial by jury would break down from the want of a sufficient number of competent jurors. They are not, therefore, prepared to recommend that any further steps be taken in this direction at present.

No. 287. *Statement showing the number of true cases of riot, etc., in the several districts of the Dacca Division from 1889 to 1894 inclusive, with the proportion of population to cases.*

DISTRICT.	Population.	TRUE CASES OF RIOTING IN—						Total of columns 3 to 8.	Average number of cases in six years from 1889 to 1894.	Average population to a case of the average in column 10.	REMARKS.
		1889.	1890.	1891.	1892.	1893.	1894.				
1	2	3	4	5	6	7	8	9	10	11	12
										Case. Persons.	
Dacca	2,420,656	79	111	81	111	119	140	641	107	1 to 22,622	
Mymensingh . .	3,472,186	164	106	170	146	127	204	857	143	1 to 24,281	
Faridpur . . .	1,797,320	94	166	134	116	147	166	823	137	1 to 13,119	
Backergunge . .	2,153,965	100	95	133	93	107	124	652	109	1 to 19,761	
Total for the Dacca Division. . .	9,844,127	377	478	518	466	500	634	2,973	496	1 to 19,847	
Sylhet	2,154,593	402	393	408	399	460	308	2,370	(a)395	1 to 5,454	

No. 288. From C. W. BOLTON, Esq., Officiating Chief Secretary to the Government of Bengal, to the Secretary to the Government of India,—No. 314-J. D., dated the 3rd October 1896.

In continuation of my letter No. 250-J. D., dated the 30th September 1896, regarding the extension and improvement of the jury system, I am directed to submit the accompanying revised table containing the latest information as to the number of jurors, etc., in each of the existing jury districts, and to request that it may be substituted for the table given in the concluding paragraph of the letter referred to above.

No. 289.

Name of Jury District.	Total number of Jurors.	Number of legal practitioners in foregoing column.	Difference.
Nadia	436	64	372
Dacca	674	148	526
Burdwan	462	148	314
Patna	517	82	435
Murshidabad	392	98	294
24-Parganas	1,742	316	1,426
Hooghly	1,295	211	1,084
Howrah	438	48	390

No. 290. From J. P. HEWETT, Esq., C.I.E., Secretary to the Government of India, to the Chief Secretary to the Government of Bengal,—No. 309, dated the 23rd March 1897.

I am directed to acknowledge the receipt of your letter No. 250-J.D., dated the 30th September 1896, conveying the views of His Honour the Lieutenant-Governor on the question of extending the system of trial by jury to certain districts in Bengal other than those in which it is now in force, and submitting the following proposals for the approval of the Government of India, *viz.*,—

(1) to extend the jury system to the districts of Chittagong, Mymensingh, Rajshahi and Jessore; but not to Midnapore and Bhagulpore;

(2) to make the extension on the same terms, and to include the same classes of cases, as in the districts where the system is already in force, subject to certain conditions to be generally laid down as to the selection of special jurors and the classes of cases to be tried with their help; and

(3) to exempt legal practitioners of all descriptions from the obligation of serving as jurors or assessors.

2. The Government of India accept as sufficient the reasons which have led the Bengal Government to exclude Midnapore and Bhagulpore from the present concession. In the concluding portion of paragraph 3 of the letter from this Department No. 923, dated the 17th June

1895, the Government of India referred to certain objections to the extension of the jury system to Mymensingh and Jessore, but in view of the explanation furnished in paragraphs 3 and 4 of your letter under reply, they concur with the Lieutenant-Governor's view that the system may be extended to those districts. But for the fact that His Honour is satisfied that there will be no difficulty in securing a competent jury, and that the Honourable Judges of the High Court do not appear to share the opinion of the Sessions Judge, the Governor General in Council would have had some hesitation in extending the system to Mymensingh, since the Sessions Judge of that district thinks it will be difficult to find properly qualified jurors.

3. I am therefore to convey the sanction of the Governor General in Council to the above proposals, and to request that, with His Honour's permission, effect may now be given to them. The fact that section 303 of the Criminal Proçedure Code has not been amended need not (as observed in paragraph 2 of your letter) be held to be a bar to the extension of the jury system to the four districts named above.

4. I am to add that the Government of India have not hitherto expressed an opinion on the proposal, made by Sir Charles Elliott, that riot and murder cases should notbe made triable by jury in the districts to which the system is now to be extended. The Governor General in Council agrees with Sir Alexander Mackenzie and the High Court in holding that no such difference should be made between the districts in which the jury system is already in force and those to which it is to be extended.

5. It is stated in paragraph 4 of your letter that Sir Alexander Mackenzie proposes to inform the High Court that he will be ready to consider the question of extension of the system of trial by jury to other districts when and where the Court consider this desirable. I am to state that the Governor General in Council has no objection to His Honour's proposal.

From the Government of India, to the Right Honourable Lord GEORGE FRANCIS HAMILTON, Her Majesty's Secretary of State for India,—No. 14, dated the 24th March 1897. No. 291.

With reference to paragraphs 3 and 4 of Sir Henry Fowler's Judicial Despatch No. 3, dated the 31st January 1895, we have the honour to forward, for Your Lordship's information, a copy of the correspondence with the Government of Bengal, noted in the margin, from which it will be seen that we have authorised that Government to extend the system of trial by jury to the districts of Chittagong, Mymensingh, Rajshahi and Jessore.

From the Government of Bengal, No. 250-J.D., dated 30th September 1896.
From the Government of Bengal, No. 314-J.D., dated 3rd October 1896.
To the Government of Bengal, No. 309, dated 23rd March 1897.

From L. M. THORNTON, Esq., Deputy Secretary to the Government of India, to the Registrar of the High Court of Judicature at Fort William in Bengal, Appellate Side,—No. 349, dated the 25th March 1897. No. 292.

With reference to the correspondence ending with your letter No. 2702, dated the 14th August 1896, I am directed to forward, for the information of the High Court, a copy of a letter* to the Government of Bengal, from which it will be seen that the Governor General in Council has sanctioned the extension of the system of trial by jury to the districts of Chittagong, Mymensingh, Rajshahi and Jessore.

* No. 339, dated the 23rd March 1897.

G. I. C. P. O.—No. 443 H. D. – 29-7-99.– 520.—W. B. G.